Date of Hearing: June 21, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 823 (Block) – As Amended May 31, 2016
As Proposed to be Amended in Committee

SUMMARY: Allows a person arrested or convicted of a nonviolent crime while he or she was a human trafficking victim to apply to the court to vacate the conviction and seal and destroy records of arrest. Specifically, **this bill**:

1) Allows a person who has been arrested for, or convicted of, or adjudicated a ward of the juvenile court for, any nonviolent offense, as defined, while he or she was a victim of human trafficking, to petition the court for relief from the arrest and conviction, or adjudication.

2) Requires the petitioner to establish by clear and convincing evidence that the arrest or conviction was the direct result of being a victim of human trafficking to be eligible for relief.

3) Requires the petition for relief to be submitted under penalty of perjury, and to describe all of the available grounds and evidence that the Petitioner was a victim of human trafficking and the arrest or conviction of a non-violent offense was the direct result of being a victim of human trafficking.

4) Requires the petition for relief and supporting documentation to be served on the state or local prosecutorial agency that obtained the conviction for which relief is sought. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the application for relief.

5) States that if opposition to the application is not filed by the applicable state or local prosecutorial agency, the court shall deem the application unopposed and may grant the application.

6) Specifies that the court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

7) Allows the court to schedule a hearing on the petition.

8) States that a hearing on the petition may consist of:

   a) Testimony by the petitioner in support of the petition;

   b) Evidence and supporting documentation in support of the petition; and

c) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

9) Provides that after considering the totality of the evidence presented, the court may vacate the conviction(s) and arrests and issue an order if it finds the following:

a) That the Petitioner was a victim of human trafficking at the time the non-violent crime was committed;

b) The commission of the crime was a direct result of being a victim of human trafficking;

c) The victim is engaged in a good faith effort to distance themselves from the human trafficking scheme, and

d) It is in the best interest of the petitioner and in the interest of justice.

10) Authorizes the court to vacate the conviction or adjudication and issue an order.

11) States that order shall do all of the following:

a) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the non-violent offense.

b) Sets aside the verdict of guilty and dismisses the accusation or information against the petitioner.

c) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered.

12) States that the court shall also order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records for three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records.

13) Requires that the petition be made within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the person has sought services for being a victim of human trafficking, whichever is later.

14) States that official documentation, as defined, of a petitioner's status as a victim of human trafficking may be introduced as evidence that his or her participation in the offense was the result of the petitioner's status as a victim of human trafficking.

15) Provides that a petitioner or his or her attorney may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner, and may appear via alternate specified methods.

16) Prohibits the disclosure of the full name of a petitioner in the record of a proceeding related to his or her petition that is accessible by the public.

17) Allows a petitioner who has obtained the relief described above to lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to that relief.

18) States that notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

19) Specifies that notwithstanding an order of relief, the petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime unless it has already been paid

20) Provides that if the court denies the petition for relief because the evidence is insufficient to establish that the arrest, conviction, or adjudication was the direct result of, or in clear connection with, a human trafficking scheme of which the petitioner was a victim, the denial shall be without prejudice.

21) States that the court may state the reasons for its denial of a petition, and if those reasons are based on deficiencies in the application that can be fixed, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

22) Specifies that for purposes of the language in this bill, "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to the language of this bill.

EXISTING LAW:

1) Provides if a defendant has been convicted of solicitation or prostitution, and if the defendant has completed any term of probation for that conviction, the defendant may petition the court for relief. If the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, the court may issue an order that does all of the following: (Pen. Code, § 1203.49.)

    a) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the crime;

    b) Order specified expungement relief; and

    c) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

2) Allows a court to set aside a conviction of a person who has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or who the court in its discretion and the interests of justice, determines that the person should be granted relief, provided that the person is not then serving a sentence for any other offense, is not on probation for any other offense, and is not being charged with any other offense. (Pen. Code, § 1203.4, subd. (a).)

3) Provides that the relief pursuant to Penal Code Section 1203.4 does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission. (Pen. Code, § 1203.4, subd. (a).)

4) Provides that a person who was under the age of 18 at the time of commission of a misdemeanor and is eligible for, or has previously received expungement relief, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted or charges were dismissed. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence. (Pen. Code, § 1203.45.)

5) States that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained. This relief is not available to a person who paid money or any other valuable thing, or attempted to pay money or any other valuable thing, to any person for the purpose of prostitution as defined. (Pen. Code, § 1203.47.)

6) States that any person who was under the age of 18 when he or she was arrested for a misdemeanor, may petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, in certain circumstances. (Penal Code, § 851.7.)

7) Allows in certain cases, a person who has reached the age of 18 years to petition the juvenile court for sealing of his or her juvenile record. (Welf. & Inst. Code, § 781.)

8) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than $500,000. (Pen. Code, § 236.1, subd. (a).)

9) States that any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of specified sex crimes is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than $500,000. (Pen. Code, § 236.1, subd. (b).)

10) Provides that DOJ shall maintain state summary criminal history information and authorizes DOJ to furnish state summary criminal history information to statutorily authorized entities for specified purposes including employment and licensing. (Pen. Code, § 11105.6.)

11) Prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information

concerning a referral to, and participation in, any pretrial or posttrial diversion program. Nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program. (Lab. Code, § 432.7, subds. (a) & (e).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "SB 823 would give victims of human trafficking a fresh start by creating a pathway to erase any nonviolent arrests and convictions from their records. Victims of human trafficking are caught in a vicious cycle of injustice that continues long after they have escaped their traffickers. They face stigmatization from being criminalized for crimes they were forced to commit during their exploitation, which limit access to good employment and create barriers to a variety of services such as housing and education. Current California law does not do enough to ensure that victims have a chance to completely re-start their lives after they escape from their traffickers and the life of coercion associated with it.

   "Under the bill, a victim who has left the life or is receiving services to leave the life can petition the court for removal of their offenses if they can demonstrate a direct or clear connection to their offenses and their life as a victim. The judge then determines whether the standard has been met. The measure also offers other relief to victims, such as allowing petitioners to appear at a hearing through electronic means. SB 823 would broaden current law and provide a track that effectively allows victims of human trafficking to erase their records and restart their lives."

2) **Expungement vs. Vacating a Conviction:** Defendants who have successfully completed probation (including early discharge) can petition the court to set aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismiss the complaint, accusation, or information. (Penal Code Section 1203.4.) Defendants who have successfully completed a conditional sentence also are eligible to petition the court for expungement relief under Penal Code Section 1203.4. (*People v. Bishop* (1992) 11 Cal.App.4th 1125, 1129.) Penal Code Section 1203.4 also provides that the court can, in the furtherance of justice, grant this relief if the defendant did not successfully complete probation. (Penal Code Section 1203.4; see *People v. McLernon* (2009) 174 Cal.App.4th 569, 577.)

   Expungement relief is not available for convictions of certain offenses. These include most felony child molestation offenses, other specific sex offenses, and a few traffic offenses. (Penal Code Sections 1203.4 and 1203.4a.) It does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution. (See *People v. Diaz* (1996) 41 Cal.App.4th 1424.)

   Expungement relief pursuant to Penal Code Section 1203.4 does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question in any questionnaire or application for public office or for licensure by any state or local agency.

Expungement relief pursuant to Penal Code Section 1203.4a, on the other hand, does not explicitly require the person to disclose the conviction in an application for a state license or public office. Penal Code Section 1203.4a is only available for defendants convicted of a misdemeanor and not granted probation.

By regulation, a private employer may not ask a job applicant about any misdemeanor conviction dismissed under Penal Code1203.4. (2 Cal. Code of Regs. Section 7287.4(d).]) Also, under Labor Code Section 432.7, a private or public employer may not ask an applicant for employment to disclose information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program. However, if the employer is an entity statutorily authorized to request criminal background checks on prospective employees, the background check would reveal the expunged conviction with an extra entry noting the dismissal on the record.

This bill actually proposes a way to vacate convictions of human trafficking victims. By vacating the conviction, the remedy is actually more forceful than an expungement. Unlike an expungement, getting a conviction vacated effectively means that the conviction never occurred. Under current California law and criminal procedure, motions to vacate a conviction are generally done through the appellate process. This bill takes a novel approach of setting up a statutory framework for vacating convictions for a particular class of individuals. Essentially, this bill creates parity between human trafficking victims and those individuals who are found factually innocent of crimes they never committed.

3) **Current Expungement Law Related to Prostitution:** Under current California law a defendant who has been convicted of solicitation or prostitution may petition the court for, and the court may set aside the conviction if the defendant can show that the conviction was the result of his/her status as a victim of human trafficking. This provision of law is the result of the passage of AB 1585 (Alejo), Chapter 708 of the Statutes of 2014. The relief set forth in AB 1585 was limited to expungement of prostitution offenses. This bill broadly expands upon these remedies to include most non-violent crimes. This bill provides more extensive relief than AB 1585 because it vacates the conviction as opposed to setting aside the conviction (expungement). This bill also provides that the court records connected to the conviction will be sealed.

4) **Duress and Necessity:** This bill provides for vacating nonviolent criminal offenses that were committed by human trafficking victims at the behest of their traffickers. Such relief would come available after the individual had been through the criminal process and been convicted. Under current law, if a victim of human trafficking is forced to commit a crime by their trafficker then they have the defenses of duress and necessity available to them. "All persons are capable of committing crimes except persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused." (Pen. Code, § 26.).

   a) **Duress:** The defendant is not guilty of a crime if he or she acted under duress. The defendant acted under duress if, because of threat or menace, he or she believed that his or her or someone else's life would be in immediate danger if he or she refused a demand or request to commit the crime. The demand or request may have been expressed or implied. The defendant's belief must have been reasonable. When deciding whether the

defendant's belief was reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in the same position as the defendant would have believed. CALCRIM 3402.

b) **Necessity:** Although evidence may raise both necessity and duress defenses, there is an important distinction between the two concepts. With necessity, the threatened harm is in the immediate future, thereby permitting a defendant to balance alternative courses of conduct. (*People v. Condley* (1977) 69 Cal.App.3d 999, 1009-1013.) Necessity does not negate any element of the crime, but rather represents a public policy decision not to punish a defendant despite proof of the crime. (*People v. Heath* (1989) 207 Cal.App.3d 892, 901.) The duress defense, on the other hand, does negate an element of the crime. The defendant does not have the time to form the criminal intent because of the immediacy of the threatened harm. (*Ibid.*)

These defenses can potentially be raised by a victim of human trafficking during a criminal case where they face charges based on conduct they engaged in as result of being a victim of human trafficking. This bill provides a mechanism to vacate a conviction after the criminal case is complete. The provisions of this bill allow an individual to petition to get a non-violent conviction vacated based on a showing that it was a result of their status as a victim of human trafficking, whether or not they raised that defense during the underlying criminal proceeding.

5) **As Proposed to be Amended In Committee:** The amendments proposed to be adopted in Committee are as follows:

a) Require the petitioner to establish by clear and convincing evidence that the arrest or conviction was the direct result of being a victim of human trafficking.

b) Require the petition for relief to describe all of the available grounds and evidence that the petitioner was a victim of human trafficking and the arrest or conviction of a non-violent offense was the direct result of that status.

c) Requires the petition for relief and supporting documentation to be served on the state or local prosecutorial agency that obtained the conviction for which relief is sought.

d) Specify that if opposition to the application is not filed by the applicable state or local prosecutorial agency, the court shall deem the application unopposed and may grant the application.

e) Provide that the court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

f) Provide a structure for an evidentiary court hearing on the petition.

g) State that the court may vacate the conviction(s) and arrests and issue an order based on specified findings.

6) **Argument in Support**: According to *The California Public Defenders Association*, "SB 823 would amend Penal Code section 1203.49 to allow an individual who petitions for relief and shows that they were a victim of human trafficking and shows that any nonviolent offense committed was connected to being a victim of human trafficking is entitled to have the conviction dismissed and the police reports and court records sealed.

"Most victims of human traffickers are young people. SB 823 is practical help for one of California's most vulnerable populations—its youth. Records of conviction can have a major impact on a young person's future. An unsealed criminal record can appear on a background check, and lead to being rejected for employment or housing. Research has repeatedly demonstrated that without stable employment and housing, there is a higher chance that a young person will reoffend thus costing taxpayers more in the long term. SB 823 is good public policy. For a small investment now, it saves money and protects the community."

7) **Argument in Opposition**: According to *The California District Attorneys Association*, "This proposal would create a class of people who would be presumptively exempted from liability for the crimes they commit, as long as the offense "was a direct result of the applicant being a human trafficking victim." Traditional defenses to criminal liability are fully adequate to address the issues that victims of trafficking may bring to excuse or justify their criminal conduct.

"We believe that SB 823 would promote criminal conduct by creating an incentive for traffickers to enlist their victims to commit crimes, knowing full well that the people they press into service will not be held responsible for their actions. This proposal would allow a defendant whose claim was heard and rejected at trial to return to court immediately after conviction to vacate his or her conviction, notwithstanding the fact that the trier of fact heard and rejected the defense.

"In addition to being poor public policy, the bill, by not defining what constitutes a "human trafficking victim", fails to provide courts or counsel with any guidance as to how these claims are to evaluated, and does not even include a burden of proof. Meanwhile, it amounts to a legislative attempt to strong-arm judges into granting these applications by requiring denials to be in writing. The applicants need not even show that they acted under duress or were coerced to succeed in vacating their convictions.

"This bill could create speedy exonerations for a wide variety of felony and misdemeanor offenses, including registerable sex offenses, residential burglary, weapons possession, every variety of theft, vehicular manslaughter, elder abuse, child abuse, and a great many crimes of violence not listed in Penal Code section 667.5(c).

8) **Related Legislation**:

a) AB 1762, (Campos), allows an individual convicted of a nonviolent crime while he or she was human trafficking victim to apply to the court to vacate the conviction upon a showing of clear and convincing evidence. AB 1762 is awaiting assignment in Senate Rules Committee.

b) AB 1761 (Weber) creates an affirmative defense against any nonviolent crime committed as a direct result of being a human trafficking victim, and would make any unproven

theories regarding the effect of human trafficking on human trafficking victims admissible in criminal action. AB 1761 is awaiting a hearing in the Senate Public Safety Committee.

9) **Prior Legislation**:

a) AB 1585 (Alejo), Chapter, 708, Statutes of 2014, provides that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

b) AB 2040 (Swanson), Chapter 197, Statutes of 2012, provides that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained.

c) AB 1940 (Hill), of the 2011-12 Legislative Session, would have authorized a court to seal a record of conviction for prostitution based on a finding that the petitioner is a victim of human trafficking, that the offense is the result of the petitioner's status as a victim of that crime, and that the petitioner is therefore factually innocent. AB 1940 was held on the Assembly Committee on Appropriations' Suspense File.

d) AB 702 (Swanson), of the 2011-12 Legislative Session, would have allowed a person adjudicated a ward of the court or a person convicted of prostitution to have his or her record sealed or conviction expunged without showing that he or she has not been subsequently convicted or that he or she has been rehabilitated. AB 702 was never heard by this Committee and was returned to the Chief Clerk.

e) AB 22 (Lieber), Chapter 240, Statutes of 2005, created the California Trafficking Victims Protection Act, which established civil and criminal penalties for human trafficking and allowed for forfeiture of assets derived from human trafficking. In addition, the Act required law enforcement agencies to provide Law Enforcement Agency Endorsement to trafficking victims, providing trafficking victims with protection from deportation and created the human trafficking task force.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
California Public Defenders Association
Junior Leagues of California
Junior League of San Diego
Generate Hope
Legal Services for Prisoners with Children
National Association of Social Workers, California Chapter

Opposition

Alameda County District Attorney, Nancy O'Malley
California District Attorneys Association
Judicial Council of California
Los Angeles County District Attorney's Office

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 SB-823 (Block (S))

*********Amendments are in ***BOLD*********

Mock-up based on Version Number 97 - Amended Senate 5/31/16
Submitted by: David Billingsley, Assembly Public Safety Committee

Add Co-Authors: Senators Steve Glazer, Robert Hertzberg and Robert Wieckowski

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 236.13 is added to the Penal Code, to read:

236.13. (a) If a person was arrested for or convicted of any nonviolent offense committed while he or she was a victim of human trafficking, including, but not limited to, prostitution as described in subdivision (b) of Section 647, the person may petition the court for ***vacatur*** relief ***of their convictions and arrests*** under this section. ***The petitioner must establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking.*** ~~If the petitioner establishes that the arrest or conviction was the direct result of, or in clear connection with, a human trafficking scheme of which he or she was a victim, the petitioner is entitled to a presumption that the requirements for relief have been met, and the court may vacate the conviction and issue an order that does all of the following:~~

~~(1) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense.~~

~~(2) Sets aside the verdict of guilty and dismisses the accusation or information against the petitioner.~~

~~(3) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered.~~

(b) The Petition for relief shall be submitted under penalty of perjury, and shall describe all of the available grounds and evidence that the Petitioner was a victim of human trafficking and the arrest or conviction of a non-violent offense was the direct result of being a victim of human trafficking.

(c) The Petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the application for relief.

d) If opposition to the application is not filed by the applicable state or local prosecutorial agency, the court shall deem the application unopposed and may grant the application.

(e) The court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

(f) If the application is opposed and or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. The hearing may consist of:

(1) Testimony by the petitioner may be required in support of the petition.

(2) Evidence and supporting documentation in support of the petition.

(3) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

(g) After considering the totality of the evidence presented, the court may vacate the conviction(s) and arrests and issue an order if it finds the following:

(1) That the Petitioner was a victim of human trafficking at the time the non-violent crime was committed,

(2) The commission of the crime was a direct result of being a victim of human trafficking,

(3) The victim is engaged in a good faith effort to distance themselves from the human trafficking scheme, and

(4) It is in the best interest of the petitioner and in the interest of justice.

(h) In issuing an order of vacatur for the convictions and elimination of the arrests, an order shall consist of the following:

(1) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense.

(2) Sets aside the verdict of guilty or the adjudication and dismisses the accusation or information against the petitioner.

(3) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered.

(i) Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime unless it has already been paid.

~~(b)~~ ***(j)*** A person who was arrested as, or found to be, a person described in Section 602 of the Welfare and Institutions Code because he or she committed a nonviolent offense while he or she was a victim of human trafficking, including, but not limited to, prostitution, as described in subdivision (b) of Section 647, may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of ***being a victim of human trafficking***~~, or in clear connection with, a human trafficking scheme of which he or she was a victim~~, the petitioner is entitled to a presumption that the requirements for relief have been met.~~, and the court may vacate the adjudication and issue an order that does all of the following:~~

~~(1) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense.~~

~~(2) Sets aside the verdict of guilty and dismisses the accusation or information against the petitioner.~~

~~(3) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered.~~

~~(c)~~ ***(k)*** If the court issues an order as described in subdivision (a) or (b), the court shall also order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records for three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

~~(d)~~ ***(l)*** A petition pursuant to this section shall be made and heard within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the petitioner has sought services for being a victim of human trafficking, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section.

~~(e)~~ ***(m)*** For the purposes of this section, official documentation of a petitioner's status as a victim of human trafficking ***may be introduced as evidence*** ~~shall establish a presumption~~ that his or her participation in the offense was the result of his or her status as a victim of human trafficking. For the purposes of this subdivision, "official documentation" means any documentation issued by a federal, state, or local agency that tends to show the petitioner's status as a victim of human trafficking. Official documentation shall not be required for the issuance of an order described in subdivision (a).

~~(f)~~ ***(n)*** A petitioner, or his or her attorney, ***may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the***

petitioner cannot attend the hearing, in which case the petitioner ~~is not required to appear in person at a hearing for relief pursuant to this section, and~~ may appear telephonically, via videoconference, or by other electronic means established by the court.

~~(g)~~ ***(o)*** Notwithstanding any other law, a petitioner who has obtained an order pursuant to this section may lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to the order.

~~(h)~~ ***(p)*** Notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

~~(i)~~ ***(q)*** The record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner's full name.

~~(j)~~ ***(r)*** A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section.

~~(k)~~ ***(s) If the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial shall be without prejudice. The court may state the reasons for its denial in writing or on the record that is memorialized by transcription, audio tape or video tape, and if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.***

~~If the court denies the petition for relief because the evidence is insufficient to establish that the arrest, conviction, or adjudication was the direct result of, or in clear connection with, a human trafficking scheme of which the petitioner was a victim, the denial shall be without prejudice. The court shall state the reasons for its denial in writing and, if those reasons are based on curable deficiencies in the petition, allow the petitioner a reasonable time period to cure the deficiencies upon which the court has based the denial.~~

~~(l)~~ ***(t)*** For the purposes of this section, the following terms apply:

(1) "Nonviolent offense" means any offense not listed in subdivision (c) of Section 667.5.

(2) "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section. The court shall provide the petitioner with a copy of the orders described in subdivisions (a), (b), and (c), as applicable, and inform the petitioner that he or she may thereafter state that he or she was not arrested for the charge, or adjudicated or convicted of the charge, that was vacated.

(3) "Victim of human trafficking" means the victim of a crime described in subdivisions (a), (b), and (c) of Section 236.1.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Section 236.13 to the Penal Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of victims of human trafficking and to improve their opportunities for recovery, it is necessary that this act limit the public's right of access to the full name of a petitioner who seeks relief from an arrest or conviction for an offense in which the petitioner participated as a result of his or her status as a victim of human trafficking.

Date of Hearing: June 21, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 966 (Mitchell) – As Amended June 1, 2016

SUMMARY: Limits the current three year enhancement for prior conviction of specified controlled substance offenses to convictions for the manufacture of a controlled substance, or using or employing a minor in the commission of specified controlled substance offenses.

EXISTING LAW:

1) Classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054 to 11058.)

2) Provides that any person convicted of, or conspiracy to commit the sale, furnishing, transportation, or possession for sale of cocaine, cocaine base, heroin, or other specified controlled substances shall, in addition to any other punishment, receive a full, separate, and consecutive three year term of imprisonment in a county jail for each prior conviction for sale, possession for sale, manufacturing, possession with the intent to manufacture specified controlled substances, or using a minor in the commission of specified controlled substance offenses. (Health & Saf. Code, § 11370.2, subd. (a).)

3) Provides that any person convicted of, or conspiracy to commit the sale, possession for sale, the manufacture, possession with the intent to manufacture PCP, or using a minor in the commission of specified offenses related to PCP shall, in addition to any other punishment , receive a full, separate, and consecutive three year term of imprisonment in a county jail for each prior conviction for sale, possession for sale, manufacturing, possession with the intent to manufacture specified controlled substances, or using a minor in the commission of specified controlled substance offenses. (Health & Saf. Code, § 11370.2, subd. (a).)

4) Provides that every person that transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, or give away, or attempts to import into this state or transport cocaine, cocaine base, or heroin, or other specified controlled substances listed in the controlled substance schedule, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment for three, four, or five years. (Health & Saf. Code, § 11352, subd. (a).)

5) States, except as provided, that every person who possesses for sale or purchases for purposes of sale any of the specified controlled substances, including cocaine and heroin, shall be punished by imprisonment in a county jail for two, three, or four years. (Health & Saf. Code, § 11351.)

6) Provides that every person that transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, or give away, or attempts to import into this state or transport methamphetamine, or other specified controlled substances listed in the controlled substance schedule, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment for two, three, or four years. (Health & Saf. Code, § 11379, subd. (a).)

7) States that the possession for sale of methamphetamine, and other specified controlled substances is punishable by imprisonment in a county jail for 16 months, or two or three years. (Health & Saf. Code, § 11378.)

8) Provides that any person who manufactures, compounds, converts, produces, derives, processes, or prepares specified controlled substances is guilty of a felony, punishable by imprisonment in the state prison for three, five or seven years. (Health & Saf. Code, § 11379.6.)

9) Any person who possesses specified chemicals with the intent to manufacture methamphetamine or PCP shall be punished by two, four, or six years in state prison. (Health & Saf. Code, § 11383.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, " SB 966 would begin undoing the damage of the failed War on Drugs. Long sentences that were central to the drug war strategy — driven by mandatory sentences like the enhancement SB 966 will repeal — utterly failed to reduce drug availability or the number of people harmed in the illicit drug market. Controlled substances are now cheaper and more widely available than ever before, despite a massive investment of tax revenue and human lives in an unprecedented build-up and fill-up of prisons and jails that have devastated low-income communities of color.

   "By amending the sentencing enhancement for prior non-violent drug convictions, this bill will improve public safety and community well-being, reduce racial disparities in the criminal justice system, and allow public funds to be invested in community-based programs instead of costly jail expansion.

   "SB966 would address extreme sentences. Enhancements result in sentences being far more severe than is just, sensible, or effective. Under current law, a person may face two to four years in jail for possessing drugs for sale under the base sentence. But if the person has two prior convictions for possession for sale, they would face an additional six years in jail – for a total of ten years. As of 2014, there were more than 1,700 people in California jails sentenced to more than five years. The leading cause of these long sentences was non-violent drug sale offenses.

   "SB 966 would reduce racial disparities in the criminal justice system. Although rates of drug use and sales are comparable across racial lines, people of color are far more likely to be

stopped, searched, arrested, prosecuted, convicted, and incarcerated for drug law violations than are whites. Research also shows that prosecutors are twice as likely to pursue a mandatory minimum sentence for Blacks as for whites charged with the same offense.

"SB 966 would help restore balance in the judicial process. Prosecutors use enhancements as leverage to extract guilty pleas, even from the innocent. Prosecutors threaten to use enhancements to significantly increase the punishment defendants would face should they exercise their right to a trial. According to Human Rights Watch, "plea agreements have for all intents and purposes become an offer drug defendants cannot afford to refuse."

"SB 966 will stop the cruel punishment of persons suffering from a substance abuse disorder. People who suffer untreated substance abuse disorders often sell drugs to pay for the drugs that their illness compels them to consume. It is fundamentally unjust, as well as counterproductive, to put a sick person in jail to address behaviors better handled in a medical or treatment setting."

2) **Background**: The enhancement for prior drug crime convictions was enacted through AB 2320 (Condit), Chapter 1398, Statutes of 1985). The bill included legislative intent "to punish more severely those persons who are in the regular business of trafficking in, or production of, narcotics and those persons who deal in large quantities of narcotics as opposed to individuals who have a less serious, occasional, or relatively minor role in this activity."

   The bill - called "The Dealer Statute" - was sponsored by the Los Angeles District Attorney and also included enhancements based on the weight of the drug involved in specified drug commerce crime. The sponsor explained that the bill was modeled on particularly harsh federal drug crime laws. The sponsor argued that the bill was necessary to eliminate an incentive for persons "to traffic [in drugs] in California where sentences are significantly lighter than in federal law." The federal laws to which the sponsor referred were those enacted in the expansion of the war against drugs during the Reagan administration. These laws included reduced judicial discretion through mandatory minimum sentences. The current administration has begun to pull back on some of the harshest policies and Congress has passed some sentence reductions, most notably reducing the disparity between cocaine powder crimes and cocaine base crimes.

3) **Argument in Support**: According to the *American Civil Liberties Union,* "SB 966 will repeal the harsh three-year enhancement for prior nonviolent drug offenses. The enhancement, which has failed to protect communities or reduce the availability of drugs, but has crippled state and local budgets and contributed to jail and prison overcrowding, is one of the many enhancements overdue for repeal.

   "Sentence enhancements based on prior convictions target the poorest and most marginalized people in our communities: those with substance use and mental health needs, and those who, after prior contact with police or imprisonment, have struggled to reintegrate into society. These and other long sentences, central to the war on drugs, have utterly failed to reduce drug availability or protect people harmed in the illicit drug market, yet they have devastated low-income communities of color, broken up families, and disrupted lives in California and across the country. Despite significant financial investments in criminal prosecutions and imprisonment, controlled substances are now cheaper and more widely

available than ever before, and our communities are no safer.

"As a result of California's lengthy sentences, including enhancements like the ones addressed by SB 966, counties around the state are building new jails to imprison people with long sentences. Since 2007, California has spent $2.2 billion on county jail construction, not including the costs borne by the counties for construction and increased staffing, or the state's debt service for high-interest loans. Sheriffs have argued for this expansion by pointing to their growing jail populations, particularly people with long sentences and with mental health and substance us needs. However, jail expansion has not improved public safety and has instead funneled money away from the community-based programs and services that have proven to successfully reduce crime.

"By reducing sentences for people with prior drug convictions, SB 966 will allow state and county funds to instead be invested in programs and services that meet community needs and improve public safety, including community-based mental health and substance use treatment, job programs, and affordable housing. SB 966 will ease overcrowding in our county jails, making them safer for inmates and jail staff alike. And lastly, SB 966 will start to undo the state's shameful legacy of archaic drug laws that have been used to target communities of color for decades."

4) **Argument in Opposition**: According to the *Office of the San Diego County District Attorney*, "Currently, the Office of National Drug Control Policy reports our nation is in the grips of an opioid epidemic, and California is not immune. In 2013, California hospitals treated more than 11,500 patients suffering an opioid or heroin overdose; this is about one overdose every 45 minutes. Now is not the time to reduce penalties for sales and trafficking of opioids. Other states are actually increasing the penalties for trafficking in certain opioids. Legislation aimed at funding educational and prevention programs to reduce the current opioid addiction epidemic would better serve all Californians.

"SB 966 repeals the current three year sentence enhancement for defendants convicted of specified drug sales and possession for sale crimes who have prior convictions for drug sales or possession for sale offenses. The scenario we will face is one where a defendant with multiple convictions for drug sales or possession for sale, or drug manufacturing offenses would be treated the same as a first time offender. This would include reducing the sentences for those who knowingly manufacture "Norco" pills laced with fentanyl, an opiate about 100 times stronger than heroin. The first time offender may need education or treatment for opioid addiction, while the defendant with multiple convictions for sales should receive punishment.

"Heroin addiction has spiked in recent years, especially for counties along the U.S. – Mexico border. In 2014, more than 300 San Diegans died from heroin overdoses, and the percentages of men and women booked into county jail who tested positive for heroin or other opiates were the highest since tracking began in 2000. The problem is severe enough locally that patrol deputies in the San Diego Sheriff's Department are now equipped to administer a drug that counteracts the effects of heroin and other opioids. Overall, experts say heroin use in San Diego County is at its highest rate in 15 years. Experts say the resurgent heroin epidemic stems in part from doctors' over-prescription of legal opioid pain killers such as Oxycodone or its time release cousin, OxyContin. When addicts can no longer afford, or find these particularly addictive over-the-counter drugs, they move on to

heroin. Drug cartels are taking notice of the demand and in 2014, law enforcement agencies in the U.S. seized triple the amount of heroin confiscated in 2009. SB 966 will allow these drug dealers to escape the additional punishment they deserve."

REGISTERED SUPPORT / OPPOSITION:

Support

Ella Baker Center for Human Rights (Co-sponsor)
Drug Policy Alliance (Co-sponsor)
American Civil Liberties Union of California (Co-sponsor)
California Attorneys for Criminal Justice
American Friends Service Committee
California Immigrant Policy Center
Friends Committee on legislation California
Enlace
Prison Policy Initiative
Lawyers' Committee for Civil Rights
Riverside Temple Beth El
Reform California
Los Angeles County Public Defender
Reentry Success Center
Californians United for a Responsible Budget
California Public Defenders Association
National Association of Social Workers, California Chapter
Center on Juvenile and Criminal Justice
Project Inform
Oakland Rising
Needle Exchange Emergency Distribution
Alliance for Mena and boys of Color
Bend the Arc: A Jewish Partnership for Justice
Legal Services for Prisoners with Children
California Partnership
Bay Area Black Worker Center
Community Works
Women's Council of the California Chapter of the National Association of Social Workers
Law Enforcement Against Prohibition
Islamic Shura Council of southern California
Time for Change Foundation
Coalition for Humane Immigration Rights for Los Angeles
Forward Together
HIV Education & Prevention Program of Alameda County
Social Justice Learning Institute
Santa Cruz County Community Coalition to Overcome Racism
California Coalition for Women Prisoners
San Francisco Public Defender
Asian American Criminal Trial Lawyers Association
Starting Over, Inc.
Essie Justice Group

Silicon Valley De-Bug
Rubicon Programs
Arts for Incarcerated Youth Network
San Diego Organizing Project
Swords to Plowshares
TGI Justice Project
The Sentencing Project
Tarzana Treatment Centers, Inc.
Unite Here, Local 2850
Young Women's Freedom Center
Mayor of the City of Richmond
California Prison Moratorium Project
John Gioia, Contra Costa County Board of Supervisors
Californians for Safety and Justice
Harm Reduction Services
Time For Change Foundation
A New Way of Life Reentry Project
Asian Americans Advancing Justice-California
Black Women Organized for Political Action
California Association for Alcohol and Drug Program Executives, Inc.
Contra Costa County Public Defender's Office
Center for Health Justice
Center for Living and Learning
Center for Employment Opportunity
Critical Resistance Los Angeles
Communities United for Restorative Justice
Health Communities, Inc.
Justice Not Jails
Los Angeles Community Action Network
Centro Legal de la Raza
Mortgage Personnel Services
Motivating Individual Leadership for Public Advancement (MILPA)
Holman United Methodist Church
Justice Policy Institute
Women's Foundation of California
Alameda County Public Defender
Underground Scholars Initiative, UC Berkeley
Marijuana Lifer Project
Filipino Bar Association of California
Monterey Bay Central Labor Council, AFL-CIO
National Association of Public Defense
National Center for Youth Law
A New Path
California State Conference of the National Association for the Advancement of Colored People
HealthRIGHT 360
East Bay Alliance for a Sustainable Economy
Courage Campaign
Safe Return Project
Reentry Solutions Group

Western Regional Advocacy Project
Asian Pacific Environmental Network
S.T.O.P. Hepatitis Task-Force
W. Haywood Burns Institute
Inland Coalition for Immigrant Justice
Bay Area Community Resource Workforce Development
Resource Center for Nonviolence
Presente.org
Prison Law Office
Prison Activist Resource Center
Orange County Needle Exchange Group
National Employment Law Project
Poetic Knights I.N.C.
ACCE Action
Root & Rebound
Four Private Citizens

Opposition

California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association
Office of the San Diego District Attorney
Peace Research Association of California
Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Narcotics Officers Association
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Riverside Sheriffs Association
Fraternal Order of Police, California State Lodge
California State Law Enforcement Association
Sacramento Deputy Sheriffs Association
Long Beach Police Officers Association
Association of Orange County Deputy Sheriffs

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: June 21, 2016
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1004 (Hill) – As Amended May 31, 2016

SUMMARY: Establishes a pilot program, until January 1, 2020, authorizing specified counties to operate a transitional youth diversion program whereby certain young offenders would serve time in juvenile hall rather than county jail. Specifically, **this bill**:

1) Authorizes the counties of Alameda, Butte, Napa, Nevada and Santa Clara to operate a transitional youth diversion program.

2) Provides that a defendant may participate in the program within the county's juvenile hall if that person is charged with committing a felony offense, other than the offenses listed, he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:

   a) Is 18 years of age or older, but under 21 years of age on the date the offense was committed;

   b) Is suitable for the program after evaluation using a risk assessment tool, as described;

   c) Shows the ability to benefit from services generally reserved for delinquents, including, but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;

   d) Meets the rules of the juvenile hall;

   e) Does not have a prior or current conviction for committing a violent or serious felony; and,

   f) Is not required to register as a sex offender.

3) Requires the probation department, in consultation with the superior court, district attorney, and sheriff of the county or the governmental body charged with operating the county jail, to develop an evaluation process using a risk assessment tool to determine eligibility for the program.

4) Excludes defendants who commit a violent felony, serious felony, or one of the offenses enumerated in existing provisions of law authorizing juveniles to be tried in adult court.

5) States that the court shall grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary

hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment.

6) Provides that if the probation officer determines that the defendant is not eligible for the transitional youth diversion program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case.

7) Authorizes the probation department to file a motion for entry of judgment if it appears to the probation department that the defendant is performing unsatisfactorily in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program.

8) States that if the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the court shall dismiss the criminal charge or charges.

9) Limits the time a defendant may serve in juvenile hall to one year.

10) Requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program.

11) States that the probation department shall submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county.

12) Prohibits defendants participating in the program from coming into contact with minors within the juvenile hall for any purpose.

13) Requires a county to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution as a suitable place for confinement for the purpose of the pilot program prior to establishing the program, as specified.

14) Requires that a county that establishes this program to work with the BSCC to ensure compliance with requirements of the federal Juvenile Justice and Delinquency Prevention Act relating to "sight and sound" separation between juveniles and adult inmates

15) Specifies that the program applies to a defendant who would otherwise serve time in custody in a county jail, and participation in the program shall not be authorized as an alternative to a sentence involving community supervision.

16) Requires each county to establish a multidisciplinary team that meets periodically to review and discuss the implementation, practices, and impact of the program, and specifies groups that shall be represented on the team.

17) Requires a county that establishes a pilot program to conduct an evaluation of its impact and effectiveness.

EXISTING LAW:

1) States that when any person under 18 years of age is detained in or sentenced to any institution in which adults are confined, it shall be unlawful to permit such person to come or remain in contact with such adults. "Contact" does not include participation in supervised group therapy or other supervised treatment activities, participation in work furlough programs, or participation in hospital recreational activities which are directly supervised by employees of the hospital, so long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations. (Welf. & Inst. Code, § 208.)

2) Provides, notwithstanding any other law, in any case in which a minor who is detained in or committed to a county institution established for the purpose of housing juveniles attains 18 years of age prior to or during the period of detention or confinement he or she may be allowed to come or remain in contact with those juveniles until 19 years of age, at which time he or she, upon the recommendation of the probation officer, shall be delivered to the custody of the sheriff for the remainder of the time he or she remains in custody, unless the juvenile court orders continued detention in a juvenile facility. If continued detention is ordered for a ward under the jurisdiction of the juvenile court who is 19 years of age or older but under 21 years of age, the detained person may be allowed to come into or remain in contact with any other person detained in the institution subject to the specified requirements. (Welf. & Inst. Code, § 208.5, subd. (a).)

3) Requires the county to apply to the Corrections Standard Authority [now BSCC] for approval of a county institution established for the purpose of housing juveniles as a suitable place for confinement before the institution is used for the detention or commitment of an individual under the jurisdiction of the juvenile court who is 19 years of age or older but under 21 years of age where the detained person will come into or remain in contact with persons under 18 years of age who are detained in the institution. The authority shall review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the authority shall take into account the available programming, capacity, and safety of the institution as a place for the combined confinement and rehabilitation of individuals under the jurisdiction of the juvenile court who are over 19 years of age and those who are under 19 years of age. (Welf. & Inst. Code, § 208.5, subd. (c).)

4) Authorizes various diversion programs and deferred entry of judgment programs under which a person arrested for and charged with a crime is diverted from the prosecution system and placed in a program of rehabilitation or restorative justice. Generally, deferred entry of judgment programs are created and run at the discretion of the district attorney. (Pen. Code § 1000.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "While legally they are adults, young offenders age 18-21 are still undergoing significant brain development and it's becoming clear that this age group may be better served by the juvenile justice system with corresponding age appropriate intensive services. Research shows that people do not develop adult-quality decision-making skills until their early 20's. This can be referred to as the

'maturity gap.' Because of this, young adults are more likely to engage in risk-seeking behavior.

"SB 1004 will allow specific counties to adopt a pilot program that gives young adult offenders the opportunity to take advantage of the supportive and educational services in the juvenile justice system, rather than serve their time in an adult county jail."

2) **Diversion Generally**: Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

   This bill creates a post-plea diversion program for young offenders who committed a non-violent, non-serious felony that does not require sex offender registration. Typically, diversion programs require defendants to participate in an out-of-custody program, whereas this bill creates an in-custody diversion program.

3) **Will this Bill Lead to Increased Incarceration?** This bill authorizes five counties to place young adult offenders in juvenile hall facilities instead of county jails for certain felony offenses. Although the bill provides that "the program applies to a defendant who would otherwise serve time in custody in a county jail, and participation in the program shall not be authorized as an alternative to a sentence involving community supervision," in practice it would be difficult to ascertain whether a defendant would receive a term of incarceration until he or she is actually sentenced. Since this is a deferred entry of judgment program, the program would be offered to the defendant prior to sentencing. Thus, as brought up by one of the opponents, there would have to be an assumption made as to the sentence that would be received in adult court. Additionally, it is quite possible that a young defendant who committed a non-serious, non-violent, non-sex-based offense would receive probation rather than term of custody. As written, the bill authorizes any custodial term up to a year to be applied to these defendants. The determination on the length of custody will likely be determined by each local probation department participating in the pilot program.

   Could this bill make it more likely that these defendants would receive a custodial sentence rather than a non-custodial sentence or probation? Additionally, since the program would be offered prior to sentencing and requires the defendant to enter a guilty plea, is there a likelihood that this bill would influence people to plead their case out rather than going forward to trial and risk a felony conviction on their record? Is there sufficient oversight provided in the bill by requiring each county to establish a multidisciplinary team with representatives from the county Public Defender's office and youth advocate organization to periodically review and discuss the implementation, practices, and impact of the program?

4) **Argument in Support**: *Chief Probation Officers of California* writes, "Recent research on adolescent brain development notes that young adults are continuing to develop and mature during the early adult years and it's becoming clear that this age group represents a population that may be better served in the juvenile justice system with age appropriate intensive services.

"The pilot program proposed under SB 1004 will allow the Counties of Alameda, Butte, Napa, Nevada and Santa Clara to voluntarily enact a pilot program creating a new category of 'transitional adult youth' that allows young adult offenders ages 18-21 to be housed in a juvenile detention facility in separate units so no comingling will occur in housing, education or recreation. Juvenile detention facilities have such services available for adolescents including, but not limited to, cognitive behavioral therapy, mental health treatment, vocational training, and education among others. The program would enable these young adults to enter into deferred entry of judgement and have their charges dismissed upon successful completion of the program. Eligibility is based upon a risk assessment and determination of suitability; additionally, persons with serious or violent felonies or sex offenses are not eligible for the program. Further, this bill provides for a reentry plan for these young adults and outcome measures to determine effectiveness of the pilot."

5) **Argument in Opposition**: *Commonweal, the Juvenile Justice Program*, is opposed and raises the following concerns:

"1. We view the basic premise of the bill—that juvenile halls are appropriate as facilities that can provide good remedial programming to young adults-- as flawed. Juvenile halls are principally designed and operated to serve as short-term detention facilities for minors charged with public offenses, pending trial and disposition or placement. While some minors serve commitment time in juvenile halls, the statewide average length of stay (per BSCC data) is 26 days. The programming capacity in juvenile halls is therefore limited by facility design and by the service capacity of the probation departments operating the halls. We have grave doubt that the programming benefits referenced obliquely in SB 1004 can be implemented in a meaningful way for the proposed young adult population, having up to one year of confinement. The juvenile hall education program is presently geared to meet school-age requirements, not to serve continuing education needs of young adults. Vocational and re-entry services are largely non-existent in the context of juvenile hall operations. Mental health services vary greatly by county and may not be oriented to a young adult population; for example, counties with Mentally Ill Offender Crime Reduction (MIOCR) - Juvenile grants may not be able to apply those resources to young adults. The bill does not outline or include program elements that are specific to the proposed young adult population. We fear that the bill may serve more as a measure of convenience, to shift young adults from crowded jails to available juvenile hall space, than as a viable "transition" program for young adults.

"2. Even with BSCC inspection and certification, some juvenile halls simply lack the available space to maintain separation (as required by the bill) between the juvenile and confined adult populations. In smaller county facilities, there may be only one program, recreation or dining space. The movements of juvenile and adult populations, in these smaller facilities, would inevitably result in sight or sound contact between children and young adults. Three-fourths of juvenile hall youth in California are between 15-17 years of age, and 12 percent are age 12-to 14, according to BSCC data. While developmental science tells us that brain progression to maturity continues to age 25, there remain important differences (and vulnerabilities) between 12-15 year olds and 18-22 year olds in custody.

"3. From a defense perspective, we continue to ask how the pilots will operate with respect to the bill's requirement that the bill will apply only to defendants 'who would otherwise serve

time in custody in a county jail'. At the time a defendant is plea bargained or offered the juvenile hall custody option, the adult sentencing outcome will not yet be known. Thus the ability to meet this requirement of the bill is based on speculation as to the adult outcome. A better approach, in our view, would be to offer the juvenile hall transition custody option at sentencing in the adult court, when the jail-time status of the defendant can be more clearly ascertained. We do not want to see the measure become a net-widening custody program for young adults who would otherwise receive non-custodial adult court sentences."

6) **Prior Legislation**: SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 18 years of age, to include those who have committed their crimes before attaining the age of 23.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Board of Supervisors
Butte County Board of Supervisors
California Police Chiefs Association
California Public Defenders Association
California Youth Empowerment Network
Chief Probation Officers of California
Santa Clara Board of Supervisors

Opposition

Commonweal, The Juvenile Justice Program
Pacific Juvenile Defender Center
Professor Barry Krisberg, U.C. Berkeley School of Law

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Date of Hearing: June 21, 2016
Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1054 (Pavley) – As Amended April 6, 2016
As Proposed to be Amended in Committee

SUMMARY: Clarifies the collection process for fines and restitution by county collection agencies, and mitigates issues of duplicate collection. Specifically, **this bill**:

1) Authorizes the agency designated to collect restitution fines and orders from sentenced felony jail inmates to retain an administrative fee to cover the actual costs of collection up to 10% of monies collected, rather than a flat 10% of the monies collected.

2) Clarifies that the agency designated by the county to collect restitution fines and orders from sentenced felony jail inmates may retain the administrative fee at the time the restitution order or fine is collected.

3) Provides that if a county agency has been designated to collect restitution orders from sentenced felony jail inmates, persons on post-release community supervision (PRCS) or mandatory supervision, and the county agency objects to referral of the order to Franchise Tax Board (FTB) for collection, neither CDCR nor the county shall refer the order to FTB.

4) Provides that the victim entitled to the restitution may designate the agency that will collect the restitution.

EXISTING LAW:

1) Authorizes the California Department of Corrections and Rehabilitation (CDCR) to collect restitution fines and restitution orders from prisoners. (Pen. Code, § 2085.5, subds. (a) & (c).)

2) Allows the Secretary of CDCR to collect money from parolees with an outstanding balance on a restitution fine or a victim restitution order. (Pen. Code, § 2085.5, subds. (g) & (h).)

3) Requires CDCR to withhold an administrative fee totaling 10% of money collected from the prisoner or parolee to be held in a special deposit account for the purposes of reimbursing administrative and support costs of the restitution program. (Pen. Code, § 2085.5, subd. (i).)

4) Authorizes the agency designated by the board of supervisors in the county of incarceration to deduct 20% to 50% from the wages and trust account deposits of a county-jail inmate serving a sentence under realignment and owing a restitution fine or restitution order. (Pen. Code, § 2085.5, subds. (b)(1) & (c).)

5) Allows the agency designated by the board of supervisors in the county of incarceration to withhold an administrative fee totaling 10% of money collected to be held in a special deposit account for the purposes of reimbursing administrative and support costs of the restitution program, as specified. (Pen. Code, § 2085.5, subd. (i).)

6) Allows the agency designated by the board of supervisors to collect money from inmates released from jail after serving a sentencing under realignment who has an outstanding balance on a restitution fine or a victim restitution order. (Pen. Code, § 2085.5, subds. (g) & (h).)

7) Authorizes the agency designated by the board of supervisors to collect unsatisfied restitutions fines and victim restitution order from persons released on PRCS or mandatory supervision. (Pen. Code, § 2085.6, subds. (a) & (b).)

8) Gives the board of supervisors discretion to impose an administrative fee not to exceed 10% of the amount collected, the proceeds of which shall be deposited into the county's general fund. (Pen. Code, § 2085.6, subd. (d).)

9) Requires the Judicial Council to adopt guidelines for a comprehensive program concerning the collection of moneys owed for fees, fines, forfeitures, penalties, and assessments imposed by court order. (Pen. Code, § 1463.010, subd. (a).)

10) Specifies that a restitution order is enforceable as a civil judgment. (Pen. Code, § 1202.4, subd. (i).)

11) Prioritizes the order in which delinquent court-ordered debt received is to be satisfied. The priorities are 1) victim restitution, 2) state surcharge, 3) restitution fines, penalty assessments, and other fines, with payments made on a proportional basis to the total amount levied for all of these items, and 4) state/county/city reimbursements, and special revenue items. (Pen. Code, § 1203.1d.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1054 addresses legal ambiguities in the collection of victim restitution fines from inmates sentenced to county jail pursuant to Penal Code Section 1170(h) and inmates released from state prison to Post-Release Community Supervision (PRCS). Because of statutory inconsistencies, it is unclear when a county sheriff is authorized to collect a state authorized administrative fee. Consequently, sheriffs may be unable to collect administrative fees to pay for restitution collection from PC 1170(h) inmates. In addition, because of an anomaly in current law, an individual on PRCS can be referred to the state Franchise Tax Board for collection of restitution, despite being on local supervision. This dual state-local authority could lead to unfair restitution collection from an individual released to PRCS. SB 1054 would specify that counties that supervise criminal populations can collect the restitution and related administrative costs and thus help victims receive restitution. The bill provides fairness in collecting restitution from criminal offenders released to PRCS, who at the present time may be overcharged restitution fines from both the state and the county.

"In 2012, the Legislature authorized the collection of restitution from county jail inmate accounts from prisoners sentenced pursuant to Penal Code section 1170(h). Since that time, there has been confusion regarding the collection of administrative fees by county sheriffs pursuant to this statute. Because of this confusion, some counties such as Monterey, San Diego and Sacramento, believe that the collection of the fee is not authorized until the release of the inmate. However, inmates may empty out their account to prevent the county sheriff from collecting their administrative fee upon their release. The California Department of Corrections and Rehabilitation (CDCR) has always interpreted the language to allow for immediate collection of the administrative fee, but not all counties agree. This bill is consistent with recent legislation and clarifies the issue for counties.

"Existing law authorizes the CDCR to refer any former prison inmate to the Franchise Tax Board (FTB) for collection of restitution. Currently an individual on Post Release Community Supervision (PRCS) can be referred to the FTB, despite the fact that their supervision is local. AB 109 transferred supervision of inmates to local control. It is inconsistent with AB 109 for the State to continue to collect restitution from an individual who is being supervised at the county level. Current law could lead to unfair double collection of restitution, hindering the successful reentry of an individual back into the community.

"SB 1054 will resolve these issues to clearly express that a county sheriff can collect the 10% administrative fee at the time restitution is collected on behalf of the victim, and by amending the Revenue and Tax Code to allow a county that is collecting restitution from an individual on PRCS to have primary authority to do so. After an individual is released from PRCS, the county would then transfer responsibility to the FTB to collect remaining restitution."

2) **Necessity for this Bill**: Because Penal Code section 2085.5, subdivision (f) states, in part, "Upon release from custody … the agency is authorized to charge a fee to cover the actual administrative cost," several counties have interpreted this to mean that the administrative fee cannot be collected until the inmate's release. In fact, this language was intended to give the county agency continuing authority to collect the administrative fee after the inmate's release.

   In order to clarify this ambiguity, this bill deletes the confusing language in Penal Code section 2085.5, subdivision (f) and enacts a statute on collection procedures applicable when an inmate is released from county jail without a supervisory tail.

3) **Argument in Support**: According to the *California State Sheriffs' Association*, "The collection of restitution has become increasingly complex since the enactment of realignment. Existing law authorizes a county agency to collect administrative fees for the collection of restitution. However, current language fails to specify when an administrative fee may be collected, which leaves counties perplexed as to when their collection is permissible….

   "It is important that counties have immediate access to administrative fees because these fees are essential to maintaining victim collection funds. Victims should continue to have immediate access to restitution and the county should be timely compensated for ensuring that restitution is collected."

4) **Prior Legislation**:

a) SB 419 (Block), Chapter 513, Statutes of 2014, extended existing restitution collection methods to persons who have unsatisfied restitution orders and fines after serving a county jail term which is not followed by a period of supervised release.

b) SB 1197 (Pavley), Chapter 517, Statutes of 2014, extended existing restitution collection methods to persons on post release community supervision and mandatory supervision.

c) SB 1210 (Lieu), Chapter 762, Statutes of 2012, requires the court to assess a post-release community supervision (PRCS) or mandatory-supervision revocation fine in the same amount as that imposed for the restitution fine and authorizes local agencies to collect them.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney (Sponsor)
California District Attorneys Association
California Public Defenders Association
California State Sheriffs' Association
Chief Probation Officers of California

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 SB-1054 (Pavley (S))

**********Amendments are in BOLD**********

Mock-up based on Version Number 98 - Amended Senate 4/6/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) (1) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from a county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors shall first obtain the concurrence of the county sheriff.

(c) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision

(h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4 of this code, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(d) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from a county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law. The agency shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or may pay the victim directly. The sentencing court shall be provided a record of the payments made to the victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(e) The secretary shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (a) or (c). The secretary shall deduct and retain from any prisoner settlement or trial award, an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. The secretary shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections and Rehabilitation. The secretary, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(f) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct and retain from a county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected pursuant to subdivision (b) or (d). The agency is authorized to deduct and retain from a prisoner settlement or trial award an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n),

unless prohibited by federal law. The agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the agency. The agency is authorized to retain any excess funds in the special deposit account for future reimbursement of the agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may collect from the parolee or, pursuant to Section 2085.6 or 2085.7, from a person previously imprisoned in county jail any moneys owing on the restitution fine amount, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(h) In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4 of this code, the secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated or a local collection program, may collect from the parolee or, pursuant to Section 2085.6 or 2085.7, from a person previously imprisoned in county jail any moneys owing, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or the agency may pay the victim directly. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(i) The secretary, or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may deduct and retain from moneys collected from parolees or persons previously imprisoned in county jail an administrative fee ~~that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board~~ **to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected** pursuant to subdivision (g) or (h), unless prohibited by federal law. The secretary shall deduct and retain from any settlement or trial award of a parolee an administrative fee that totals 5 percent of an amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. The agency is authorized to deduct and retain from any settlement or trial award of a person previously

imprisoned in county jail an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n). The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections and Rehabilitation or the agency, as applicable. The secretary, at his or her discretion, or the agency may retain any excess funds in the special deposit account for future reimbursement of the department's or agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(j) If a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections and Rehabilitation shall collect the restitution order first pursuant to subdivision (c).

(k) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and that prisoner has both a restitution fine and a restitution order from the sentencing court, if the agency designated by the board of supervisors in the county where the prisoner is incarcerated collects the fine and order, the agency shall collect the restitution order first pursuant to subdivision (d).

(l) If a parolee has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections and Rehabilitation, or if the prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may collect the restitution order first, pursuant to subdivision (h).

(m) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars ($50) for visits that include the inmate and one visitor, seventy dollars ($70) for visits that include the inmate and two or three visitors, and eighty dollars ($80) for visits that include the inmate and four or more visitors.

(n) Compensatory or punitive damages awarded by trial or settlement to any inmate, parolee, person placed on postrelease community supervision pursuant to Section 3451, or defendant on mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (e) and (i). The Department of Corrections and Rehabilitation shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive

damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency is authorized to make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(o) (1) Amounts transferred to the California Victim Compensation and Government Claims Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation and Government Claims Board. If the restitution payment to a victim is less than twenty-five dollars ($25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars ($25) or when the victim requests payment of the lesser amount.

(2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation and Government Claims Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections and Rehabilitation, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections and Rehabilitation, the California Victim Compensation and Government Claims Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation and Government Claims Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

SEC. 2. Section 2085.7 is added to the Penal Code, to read:

2085.7. (a) When a prisoner who owes a restitution fine, or any portion thereof, is released from the custody of a county jail facility after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170, he or she has a continuing obligation to pay the restitution fine in full. The balance of the restitution fine remaining unpaid after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of 1170 is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the department or county agency designated by the board of supervisors in the county in which the prisoner is released. If a county elects to collect restitution

fines, the department or county agency designated by the county board of supervisors shall transfer the amount collected to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury.

(b) When a prisoner who owes payment for a restitution order, or any portion thereof, is released from the custody of a county jail facility after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170, he or she has a continuing obligation to pay the restitution order in full. The balance of the restitution order remaining unpaid after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170 is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the agency designated by the county board of supervisors in the county in which the prisoner is released. If the county elects to collect the restitution order, the agency designated by the county board of supervisors for collection shall transfer the collected amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury or may pay the victim directly. The sentencing court shall be provided a record of payments made to the victim and of the payments deposited into the Restitution Fund.

(c) The amount of a restitution order or restitution fine that remains unsatisfied after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170 is be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(d) At its discretion, a county board of supervisors may impose a fee upon the individual after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170 to cover the actual administrative cost of collecting the restitution fine and the restitution order, in an amount not to exceed 10 percent of the amount collected, the proceeds of which shall be deposited into the general fund of the county.

(e) If a county elects to collect both a restitution fine and a restitution order, the amount owed on the restitution order shall be collected before the restitution fine.

(f) If a county elects to collect restitution fines and restitution orders pursuant to this section, the county shall coordinate efforts with the Franchise Tax Board pursuant to Section 19280 of the Revenue and Taxation Code.

(g) Pursuant to Section 1214, the county agency selected by a county board of supervisors to collect restitution fines and restitution orders may collect restitution fines and restitution orders after an individual has completed a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170.

(h) For purposes of this section, the following definitions shall apply:

(1) "Restitution fine" means a fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4.

(2) "Restitution order" means an order for restitution to the victim of a crime imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4.

SEC. 3. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) (A) Fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a juvenile or superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than one hundred dollars ($100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, and any amounts due pursuant to Section 903.1 of the Welfare and Institutions Code may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the juvenile or superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. Except as specified in subparagraph (B), the Department of Corrections and Rehabilitation or county may refer a restitution order to the Franchise Tax Board, in accordance with subparagraph (B) of paragraph (2), for any person subject to the restitution order who is or has been under the jurisdiction of the Department of Corrections and Rehabilitation or **the** county.

(B) The Department of Corrections and Rehabilitation or **the** county shall not refer a restitution order to the Franchise Tax Board if a county agency has been designated by the county board of supervisors to collect restitution from individuals who (i) ~~have been sentenced to a~~ **are serving a sentence in a** county jail pursuant to subdivision (h) of Section 1170 of the Penal Code, (ii) are on mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170 of the Penal Code, or (iii) are on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3 of the Penal Code, the designated county agency has an existing collection system**,** and objects to collection by the Franchise Tax Board, and the designated county agency informs the Department of Corrections and Rehabilitation or **the** county that it will collect the restitution order.

(C) If the crime victim entitled to restitution in the order notifies either the Department of Corrections and Rehabilitation or the designated county agency with regard to his or her preference of a collecting agency, that preference shall be honored and the collection shall be performed in accordance with the preference of the victim.

(2) For purposes of this subdivision:

(A) The amounts referred by the juvenile or superior court, the county, or the state under this section may include an administrative fee and any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral that shall include setting forth a minimum dollar amount subject to referral and collection.

(b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a) shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) A collection under this article is not a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

Date of Hearing: June 21, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1075 (Runner) – As Amended April 14, 2016

SUMMARY: Requires the Department of Justice (DOJ) to include disaggregated information on child molestation crimes in its annual statewide criminal statistics report. Specifically, **this bill**:

1) Requires the DOJ in its annual report "Crime in California", to include statistics on child molestation in the same format and within the existing Table 1 and Table 2 that reports on the number, rates per 100,000 population, and percentage change in other violent crimes, including rape.

2) States that child molestation shall include the combined total offenses of lewd and lascivious acts upon a child under the age of 14, and continuous sexual assault of a child.

EXISTING LAW:

1) Requires the DOJ to collect specified crime-related data, and to prepare an annual report of crime-related statistics. (Pen.Code, §13010.)

2) Specifies that the DOJ annual report contain statistics regarding the amount and types of offenses known to public authorities; the personal and social characteristics of criminals and delinquents; the administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents; and the number of citizens' complaints received by law enforcement agencies, as specified. (Pen.Code, §13012.)

3) Requires every person and agency that deals with crimes or criminals or with delinquency or delinquents to maintain specified records and report statistical data to the DOJ when requested by the Attorney General. (Pen.Code §13020.)

4) States that any person who lives with, or has recurring access to, a child and engages in three or more acts of substantial sexual conduct, or commits three or more acts of lewd and lascivious conduct with a child under the age of 14 over a period of at least three months, is guilty of the felony of continuous sexual abuse of a child, punishable by 6, 12, or 16 years in the state prison, by a fine not to exceed $10,000, or by both a fine and imprisonment. (Pen.Code, § 288.5.)

5) Provides that any person who commits lewd and lascivious acts with a child under the age of 14 years shall be imprisoned in state prison for three, six or eight years. (Pen.Code, §288.)

6) Defines a "lewd act with a child" as any touching (through clothing or on the skin) of a child (by the defendant or by the child at the instigation of the defendant) done for sexual gratification (of the perpetrator or the child). [People v. Martinez (1995) 11 Cal.4th 434, 452.]

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "SB 1075 requires the California Department of Justice to include child molest statistics in the Crime in California Report prepared annually by the Department. The bill provides that the number of child molest offenses and the rate of offense per 100,000 California residents be reported in the same manner employed to report crimes of rape. The bill defines child molest to include violation of Penal Code Section 288 (a) (lewd or lascivious acts upon a child under the age of 14) or Penal Code 288.5 (continuous sexual abuse of a child).

   "Accurate information is necessary to effectively allocate resources and funding. SB 1075 will give sex crimes against children the same scrutiny as rape, robbery and vehicle theft and provide policymakers and law enforcement with much needed data."

2) **Background**: DOJ prepares an annual report entitled *Crime in California.* Its most recent available report, Crime in California 2014, explains:

   "Crime in California, 2014 presents an overview of the criminal justice system in California. Current year statistics are presented for reported crimes, arrests, dispositions of adult felony arrests, adult probation, criminal justice personnel, citizens' complaints against peace officers, domestic violence-related calls for assistance, and law enforcement officers killed or assaulted. In addition, statistics for preceding years are provided for historical context."

   This bill would require the California Department of Justice to include disaggregated child molestation statistics in the Crime in California Report prepared annually by the Department. The bill provides that the number of child molestation offenses and the rate of offense per 100,000 California residents be reported in the same manner employed to report crimes of rape. The bill defines child molest to include violations of subdivisions (a) and (b) of Penal Code section 288 (lewd or lascivious acts upon a child under the age of 14) or Penal Code section 288.5 (continuous sexual abuse of a child).

   It appears that the report currently contains some information on the offenses targeted by this bill under the characterization of "lewd or lascivious," although for purposes of the report that definition includes a broader array of sections (specifically, Penal Code sections 220, 266j, 288(a), 288(b)(1), 288(b)(2), 288(c)(1)*, 288(c)(2), and 288.5(a).) For example, the 2014 report indicates that between 2009 and 2014, adult felony arrests for lewd and lascivious crimes decreased 20.9 percent, and increased 3 percent between 2013 and 2014. (See page 26 of the report.) In addition, the report appears to include a breakdown of the age of the offender for this category of offenses (See page 40 of the 2014 report). This bill would require that this category of offenses be broken down to specifically identify two child molestation crimes.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United

Opposition

California Police Chiefs' Association

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: June 21, 2016
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1084 (Hancock) – As Amended May 11, 2016

SUMMARY: Makes technical clarifying changes to existing provisions of law that authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole (LWOP) to submit a petition for recall and resentencing. Specifically, **this bill**:

1) Clarifies that if the court finds by a preponderance of the evidence that one or more of the statements in the petition is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant.

2) States that the defendant may submit another petition if it the sentence is not recalled or the defendant is resentenced to LWOP.

3) Clarifies that the exclusionary factors must have been pled and proved.

4) Specifies that nothing in this bill is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

5) Makes other technical changes.

EXISTING LAW:

1) Authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to LWOP to submit to the sentencing court a petition for recall and resentencing after he or she has served at least 15 years of his or her sentence. (Pen. Code, § 1170, subd. (d)(2)(A)(i).)

2) Requires the petition to include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to LWOP, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

   a) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law;

   b) The defendant does not have juvenile felony adjudications for assault or other felony crimes with significant potential for personal harm to victims prior to the offense for which the sentence is considered for recall;

c) The defendant committed the offense with at least one adult codefendant; or,

d) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse. (Pen. Code, § 1170, subd. (d)(2)(B).)

3) Provides that if the court finds by a preponderance of the evidence that the statements in the petition are true the court shall hold a hearing to consider whether to recall the sentence and commitment previously ordered and resentence the defendant, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing. (Pen. Code, § 1170, subd. (d)(2)(E).)

4) Provides that if a sentence is not recalled, the defendant may submit another petition for recall and resentencing again after having served 20 years, then 24 years, and a final petition may be submitted during the 25th year of defendant's sentence. (Pen. Code, § 1170, subd. (d)(2)(H).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1084 makes technical non-substantive changes to the provisions allowing a person who was under 18 years of age when sentenced to life without parole to submit a petition for resentencing. The bill clarifies language that has caused some confusion in the courts in the following ways:

- Clarifies that the person convicted for a crime committed while under the age of 18 and sentenced to LWOP can submit a petition after he or she has been incarcerated at least 15 years.

- Provides that if the court finds by a preponderance of the evidence that one or more of the statements specified is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant.

- Clarifies that the defendant may submit another petition if the sentence is not recalled or the defendant is resentenced to LWOP.

- Clarifies that nothing in the provisions dealing with the ability of a person to seek a resentencing is intended to diminish any rights or remedies otherwise available.

- Makes other technical amendments."

2) **LWOP: Review of Case Law**: In 2005, the United States Supreme Court ruled that persons who were under the age of 18 at the time of the offense are ineligible for the death penalty. (*Roper vs. Simmons* (2005) 543 U.S. 551.) Penal Code Section 190.5 codified the holding of

Roper and stated the penalty for a person 16 to 18 years of age convicted of first-degree murder with special circumstances is either LWOP or 25-years-to-life. (Penal Code Section 190.5(b).)

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to LWOP. (*See Graham v. Florida (2010) 560 U.S. 48.*) The Court discussed the fundamental differences between a juvenile and adult offender and reasserted its findings from the *Roper* case, *supra*, that juveniles have lessened culpability than adults due to those differences. The Court stated that "life without parole is an especially harsh punishment for a juvenile," noting that a juvenile offender "will on average serve more years and a greater percentage of his life in prison than an adult offender." (*Graham*, *supra*, 560 U.S. at 70.] However, the Court stressed that "while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." (*Id.* at 75.)

Roper and *Graham* establish that children are constitutionally different from adults for sentencing purposes and emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.

In 2012, SB 9 (Yee), Chapter 828, Statutes of 2012, was signed into law to address cases where a juvenile was sentenced to LWOP by providing a mechanism for recall and resentencing. Pursuant to SB 9, a person who was under 18 years of age at the time of committing an offense for which the person was sentenced to LWOP could, after serving at least 15 years in prison, petition the court for re-sentencing. If a re-sentencing hearing is granted, the court would have the discretion whether to re-sentence the petitioner to a lower sentence or let the life without parole sentence remain. If granted a lower sentence, the petitioner must still serve the minimum sentence and obtain approval of the parole board and the Governor prior to parole.

This bill makes technical clarifying amendments to the law enacted by SB 9.

3) **Argument in Support**: According to *Human Rights Watch*, the sponsor of this bill, "In 2012, California created a judicial review process for cases in which people under the age of 18 have been sentenced to life without the possibility of parole. It was the first law of its type in the country. Our work on the issue of life without parole for juveniles has led to contact with attorneys representing youth offenders in these hearings. We believe there are areas where the law is unclear as written and leading to different interpretations in different courtrooms. It is our hope that this bill will clarify the language of the law and ensure consistency in practice across the state."

4) **Argument in Opposition**: None submitted.

5) **Prior Legislation**:

a) SB 9 (Yee) Chapter 828, Statutes 2012, authorized a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole (LWOP) to submit a petition for recall and resentencing to the sentencing court, as specified.

b) SB 399 (Yee), of the 2009-10 Legislative Session, was substantially similar to this bill. SB 399 failed passage on Assembly Floor.

c) SB 999 (Yee), of the 2007-08 Legislative Session, would have eliminated the LWOP sentence thus making the sentence for first-degree murder with special circumstances by a defendant under 18 years of age 25-years-to-life. SB 999 failed passage on Senate Floor.

d) SB 1223 (Kuehl), of the 2003-04 Legislative Session, would have authorized a court to review the sentence of a person convicted as a minor in adult criminal court and sentenced to state prison after the person has either served 10 years or attained the age of 25. SB 1223 failed passage in Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Human Rights Watch (Sponsor)
California Public Defenders Association

Opposition

None

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Date of Hearing: June 21, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1137 (Hertzberg) – As Amended March 31, 2016

SUMMARY: Makes it a crime to knowingly introduce "ransomware" into a computer or computer network for the purpose of extorting payment. Specifically, **this bill**:

1) Makes it a crime for a person to knowingly introduce ransomware into any computer, computer system, or computer network. This bill would make a violation of this provision punishable by imprisonment in a county jail for two, three, or four years and a fine not exceeding $10,000.

2) Defines "ransomware" to mean a "computer or data contaminant or lock placed in or introduced into a computer system, computer or data in a computer system, or computer that restricts access to system, computer, or data in some-way, and under circumstances in which the person responsible for the ransomware demands payment of money or other consideration to remove the- contaminant, unlock the computer system or computer, or repair the injury done to the computer system, computer, or data by the contaminant or lock."

3) Specifies that a person is responsible for placing or introducing a contaminant or lock into a computer system, computer or data on a computer system, or computer if the person directly places or introduces the contaminant or lock, directs another to do so, or induces another person do so, with the intent of demanding payment or other consideration to remove the contaminant, unlock the computer system or computer, or repair the computer system, computer or data on the computer system, or computer.

4) Specifies that prosecution under that provision does not prohibit or limit prosecution under any other law.

EXISTING LAW:

1) Defines "extortion" as the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right. (Pen. Code, § 518.)

2) Specifies that fear, sufficient to constitute extortion, may be induced by a threat of any of the following:

   a) To do an unlawful injury to the person or property of the individual threatened or of a third person;

b) To accuse the individual threatened, or any relative of his, or member of his family, of any crime;

c) To expose, or to impute to him or them any deformity, disgrace or crime; or,

d) To expose, any secret affecting him or them. (Pen. Code, § 519.)

3) States that every person who extorts any money or other property from another, under circumstances not amounting to robbery or carjacking, by means of force, or any threat, such as is mentioned in existing provisions of law relating to threats sufficient to constitute extortion, shall be punished by custody time of two, three or four years. (Pen. Code Section 520.)

4) Provides that every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in the Penal Code, is guilty of a misdemeanor. (Pen. Code Section 521.)

5) States that every person who attempts, by means of any threat, such as is specified in existing provisions of law relating to threats sufficient to constitute extortion, to extort money or other property from another is punishable by imprisonment in the county jail not longer than one year or in the state prison or by fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment. (Pen. Code Section 524.)

6) Specifies that any person who commits any of the following acts is guilty of a crime:

a) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data. (Pen. Code, § 502, subd. (c)(1).)

b) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network. (Pen. Code, § 502, subd. (c)(2).)

c) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network. (Pen. Code, § 502, subd. (c)(4).)

d) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network. (Pen. Code, § 502, subd. (c)(5).)

e) Knowingly and without permission disrupts or causes the disruption of government computer services or denies or causes the denial of government computer services to an authorized user of a government computer, computer system, or computer network. (Pen. Code, § 502, subd. (c)(10).)

f) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a public safety infrastructure computer system computer, computer system, or computer network. (Pen. Code, § 502, subd. (c)(11).)

g) Knowingly and without permission disrupts or causes the disruption of public safety infrastructure computer system computer services or denies or causes the denial of computer services to an authorized user of a public safety infrastructure computer system computer, computer system, or computer network. (Pen. Code, § 502, subd. (c)(12).)

7) States that any person who violates any of the provisions of 6(a)-(g) is guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years and a fine not exceeding ten thousand dollars ($10,000), or a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

8) Specifies that any person who commits any of the following acts is guilty of a crime:

a) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section; (Pen. Code, § 502, subd. (c)(6).)

b) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network; and (Pen. Code, § 502, subd. (c)(7).)

c) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or public safety infrastructure computer system computer, computer system, or computer network in violation of this section. (Pen. Code, § 502, subd. (c)(13).)

9) States that any person who violates 8(a)-(c) is punishable as follows:

a) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding one thousand dollars ($1,000);

b) For any violation that results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment; and

c) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.

10) Specifies that any person who commits any of the following acts is guilty of a crime:

a) Knowingly introduces any computer contaminant into any computer, computer system, or computer network; and (Pen. Code, § 502, subd. (c)(8).)

b) Knowingly introduces any computer contaminant into any public safety infrastructure computer system computer, computer system, or computer network. (Pen. Code, § 502, subd. (c)(14).)

11) States that any person who violates 10(a)-(b) is punishable as follows:

a) For a first violation that does not result in injury, a misdemeanor punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment; and

b) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both fine and imprisonment.

12) States that in addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data who suffers damage or loss by reason of a violation of specified computer may bring a civil action against the violator for compensatory damages and injunctive relief or other equitable relief. (Pen. Code, § 502, subd. (e)(1).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Kidnapping and ransom demands have been around as long as criminal activity itself. But what is new in today's digital age is the immediacy in which a computer hacker can access your computer and hold it hostage. Computer users are told that the only way to get their machines back is to pay a steep fine. This is known as "ransomware."

"SB 1137 addresses this new form of ransom in Penal Code. Currently, statutes on extortion can be used to prosecute ransomware crimes. However, extortion is based on the threat of future harm. When ransomware is used there is no threat to commit a future harm unless a ransom is paid, the harm has already occurred. The attacker is demanding payment to undo the harm they have already committed. The difference is slight, but extremely important in a criminal prosecution.

"Earlier this year, computers at Hollywood Presbyterian Medical Center became infected with malware that shut down their communications capabilities. After the 434-bed hospital had been reduced to keeping records with pen and paper, the facility paid a ransom of 40 bitcoins -- about $17,000 -- and regained access to its system.

"SB 1137 defines ransomware and outlines the punishment for those convicted of the crime. With advanced technology comes advanced forms of crime, and we must be properly equipped to address them."

2) **Ransomware:** Ransomware is a type of malware that restricts access to the infected computer system in some way, and demands that the user pay a ransom to the malware operators to remove the restriction. Some forms of ransomware systematically encrypt files on the system's hard drive, which become difficult or impossible to decrypt without paying the ransom for the encryption key.

   Payment is virtually always the goal, and the victim is coerced into paying for the ransomware to be removed—which may or may not actually occur—either by supplying a program that can decrypt the files, or by sending an unlock code that undoes the payload's changes. A key element in making ransomware work for the attacker is a convenient untraceable payment system. A range of such payment methods have been used, including: wire transfer, premium-rate text messages, online payment voucher service such as Ukash or Paysafecard, and the digital currency Bitcoin.

13) **Ransomware is a Crime under Existing California Law:** The use of ransomware to demand a payment from a computer or computer system owner or operator appears to constitute extortion under existing California law. California law makes it a felony to commit extortion. "Extortion" is defined as obtaining property from another, with his consent by a use of force or fear. (Pen. Code, § 518.) Existing law states that fear, sufficient to establish extortion, may be established by a threat do an unlawful injury to the person or property of the individual.

   A demand for money based on the introduction of "ransomware" to an individual computer or to a computer network seems to fit within the crime of extortion. If the computer owner fails to pay the "ransom", they face financial losses if they are unable to access data, programs, or computer functionality that they need. In addition to any financial losses, the computer user is denied the use of, and access to, their property. If the fear of such consequences results in payment to remove the ransomware, the crime of extortion has been committed.

   California law (Pen. Code, § 502 – the section amended by this bill) also makes it a crime to access, damage or alter a computer system or data without permission. Section 502 specifically lists prohibited acts and provides various penalties, based on the severity of the harm caused or value of services taken.

   This bill would add the use of ransomware as a computer crime in Section 502. The penalty for this form of computer crimes is the same as the penalty for extortion, a felony term of two, three, or four years. (Pen. Code, §§ 518-527.)

3) **Governor's 2016 Veto Message Regarding "Multiplication" and "Particularization" of Crimes:** In 2015, the Governor vetoed a number of criminal justice bills because they created new crimes for conduct that was already prohibited. The bills the Governor vetoed on this basis included: AB 144, AB 849, SB 168, SB 170, SB 271, SB 333, SB 347, SB 716, SB 722

   The Governor vetoed those bills and issued this statement applying to all the bills:

   > "Each of these bills creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and

particularization of criminal behavior creates increasing complexity without commensurate benefit.

"Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

"Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective."

As pointed out above, "ransomware" is already criminal behavior prohibited by existing law.

4) **Argument in Support**: According to the *Los Angeles County District Attorney*, "Attackers using ransomware don't just target private individuals. Businesses, financial institutions, government agencies, academic institutions, and other organizations are often targets. According to the L.A. Times, since 2010 at least 158 institutions, including medical providers, insurers and hospitals, have reported being hacked or having information technology issues that compromised patient records.

"During February 2016, the Los Angeles County Department of Health Services computers were targets of a "ransomware" cyber attack. The agency identified remnants of a ransomware thread on five work computers, but operations were not affected and the county did not pay a ransom. On the other hand, Hollywood Presbyterian Medical Center paid a $17,000 ransom in bitcoin to hackers who seized control of the hospital's computer system on February 5. The attack forced the hospital to return to pen and paper for its record-keeping. In the best interest of restoring normal operations, the hospital paid the ransom to obtain the decryption key.

"SB 1137 provides a clear code section to prosecute this specific type of computer crime. Existing law does not adequately provide prosecutors with the tools to prosecute this type of crime. SB 1137 eliminates the argument that triggering a system function that implements a restriction is not a contaminant for purposes of Penal Code Section 502. SB 1137 also eliminates this type of argument for password-lockout situations, in which the attacker resets the victim's password and holds it hostage. SB 1137 also provides prosecutors a much needed tool to prosecute attackers who use ransomware because California's existing extortion statute (Penal Code 518) may not properly cover the type of harm caused by ransomware.

"Penal Code Section 518 makes it a crime to obtain property from an individual with the individual's consent by a wrongful use of fear. A wrongful use of fear for the purpose of extortion requires a threat to do an unlawful injury to the property of another because the harm has already been caused by the introduction of the malware.

"For example in a traditional extortion prosecution, a defendant is charged with extortion for threatening to cause physical harm to an individual or their property (pay me $1 million or I will break your legs or I will burn your business to the ground). In these prosecutions it is the threat to commit the harm unless a ransom is paid that is prosecuted.

"When ransomware is used there is no threat to commit a future harm unless a ransom is paid, the harm has already occurred. The attacker is demanding to undo the harm they have already committed. The difference is slight but extremely important in a criminal prosecution.

5) **Argument in Opposition:** According to *Legal Services for Prisoners with Children*, "This bill would create a specific prohibition against infecting a person's computer with 'ransomware,' causing their computer to fail to operate, and extorting money from them. However, this activity is already covered by existing law. Penal Code section 502(c) makes it a crime to access a person's computer, to delete data in order to extort money from them, to damage or delete a person's data without their permission, to disrupt the services of another's computer, and to introduce a computer contaminant (virus) to a computer system. Some of these are already felonies.

"Because these actions are already prohibited, a new crime and additional punishment is neither necessary nor prudent. This will simply create longer sentences for individuals convicted of violating these provisions, which does not increase public safety."

6) **Related Legislation**:

a) AB 32 (Waldron), Chapter 614, Statutes of 2015, increased fines for felony convictions of specified computer crimes from a maximum of $5,000, to a maximum of $10,000.

7) **Prior Legislation**:

a) AB 1649 (Waldron), Chapter 379, Statutes of 2014, provided that the crimes and penalties for unauthorized access of or damage to a computer, computer system or data shall apply to government and public safety infrastructure computers, computer systems and data.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Co-Sponsor)
TechNet (Co-Sponsor)
AFSCME Local 685
Association of Deputy District Attorneys
Association of Orange County Deputy Sheriffs
California Association of Licensed Investigators
California District Attorneys Association
California Hospital Association
California Police Chiefs Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Fraternal Order of Police
Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Los Angeles Probation Officer's Union

Long Beach Police officers Association
Riverside Sheriffs Association
Sacramento County Deputy Sheriffs' Association

Opposition

Legal Services for Prisoners with Children

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: June 21, 2016
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1157 (Mitchell) – As Amended May 31, 2016

SUMMARY: Prohibits local correctional facilities and juvenile facilities from replacing in-person visits with video or other types of electronic visitation, as specified. Specifically, **this bill**:

1) States that a local detention facility that elects to utilize video or other types of electronic visitation shall comply with the following:

   a) Sentenced incarcerated persons in a Type I facility, as defined, and all incarcerated persons in a Type II facility, as defined, shall be allowed no fewer than two in-person visits totaling at least one hour per incarcerated person each week.

   b) Incarcerated persons in a Type III facility, as defined, or a Type IV facility, as defined, shall be allowed no fewer than one in-person visit totaling at least one hour per incarcerated person each week.

2) Prohibits, on or after January 1, 2017, a city, county, city and county, or other local entity from entering into, renewing, extending, or amending a contract with a private prison corporation that does not provide persons to be incarcerated or detained at the private prison corporation's facility, at a minimum, no fewer than two in-person visits totaling at least one hour per incarcerated person each week.

3) Provides that a juvenile facility, including juvenile hall, camp, ranch, or forestry camp that elects to utilize video or other types of electronic visitation shall comply with all of the following with respect to in-person visitation:

   a) Incarcerated minors shall be allowed to receive in-person visits by parents, guardians, or persons standing in loco parentis (in place of the parent), at reasonable times, subject only to the limitations necessary to maintain order and security;

   b) Opportunity for in-person visitation shall be a minimum of two hours per week; and,

   c) In-person visits may be supervised, but conversations shall not be monitored unless there is a security or safety need.

4) States the finding of the Legislature that opportunities for in-person visitation in local correctional facilities, juvenile halls, juvenile homes, ranches, and camps are essential for persons who are incarcerated and detained to maintain family stability, reduce disciplinary infractions and violence while incarcerated, reduce recidivism, increase the chances of obtaining employment postrelease, and facilitate successful reentry. Other types of visitation

shall only be used to supplement in-person visitation to further promote the above-mentioned goals. This act does not interfere with the ability of the Board of State and Community Corrections (BSCC) to issue regulations with regards to visitation.

5) Provides that it is the intent of the Legislature to strengthen family connections by facilitating in-person visitation.

EXISTING LAW:

1) Requires each county jail to contain a sufficient number of rooms to allow certain persons belonging to specified classes to be confined separately and distinctly from persons belonging to other specified classes. (Pen. Code, § 4001.)

2) Requires a correctional facility administrator to develop written policies and procedures for inmate visiting which provides for as many visits and visitors as facility schedules, space, and number of personnel will allow. For sentenced inmates in Type I facilities and all inmates in Type II facilities there shall be allowed no fewer than two visits totaling at least one hour per inmate each week. In Type III and Type IV facilities there shall be allowed one or more visits, totaling at least one hour, per week. (15 Cal. Code Regs. § 1062.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1157 will prohibit California jails from eliminating in-person visitation rights by clarifying that video technology cannot be used to replace in-person visits. At least eleven counties in California have eliminated, plan to eliminate, or severely restrict in-person visitation in at least one of their jails.

   "Since the implementation of public safety realignment in California, more people are serving time in county jails and for longer periods of time than ever before. Eliminating in-person visitation has a drastic and negative impact on families, particularly for children.

   "A 2014 Department of Justice report found that when a person is incarcerated, even for a short period of time, family contact and in-person visits are crucial to maintaining family stability, reducing disciplinary infractions and violence, reducing recidivism, increasing the chances of obtaining employment post-release, and facilitating successful re-entry. One study found that even a single visit reduces recidivism by 13% for new crimes. Video visitation can be an extremely positive supplement to in-person visitation, particularly when people are imprisoned far from their families and networks of support.

   "What SB 1157 does not do is prevent sheriffs' departments from adopting video visitation. SB 1157 simply makes it clear that 'video visitations are not a replacement for opportunities for in person contact.'

   "This bill clarifies that California county jails, juvenile facilities, and private facilities cannot replace in-person visitation with video visitation. This is important as remote video visits are cost-prohibitive for many families, and many low-income families do not have access to computers or high-speed internet. And in facilities that have already replaced in-person

visitation with video visitation, families who cannot afford video visitations from home, are left with one option: travel to the correctional facility and 'visit' with their loved one at no cost from video kiosks in the lobby.

"Without passage of SB 1157, more California families will be unable to see their loved ones while incarcerated."

2) **Background**: According to the background materials provided by the author, "Since the implementation of public safety realignment, more people are serving time in county jails and for longer period of time than ever before. Eliminating in-person visitation would have a drastic and negative impact on families, particularly children, the wellbeing of incarcerated people, and the institutional environment.

"At least five California counties (Kings, Napa, San Bernardino, San Diego, and Solano) have eliminated in-person visitation in at least one of their jails, meaning families there can only see their loved ones through a computer screen.

"Two counties (Imperial and Placer) have severely restricted in person visitation since adopting video visits.

"Three additional counties (Orange, San Mateo, and Tulare) intend to renovate or build new facilities that have no space for in-person visits. Families with loved ones in these facilities will only be able to see their loved ones through a computer screen.

"At least six other California counties (Butte, Los Angeles, Mendocino, Plumas, Riverside and San Luis Obispo) use video visits in at least one of their jails and at least seven other counties (Merced, Sacramento, San Joaquin, Santa Barbara, Santa Cruz, Sutter, and Yolo) plan to adopt a video visitation system."

3) **Regulations on Visitation**: Existing regulations require a correctional facility administrator to develop written policies and procedures for inmate visiting which provides for as many visits and visitors as facility schedules, space, and number of personnel will allow. For sentenced inmates in Type I facilities and all inmates in Type II facilities there shall be allowed no fewer than two visits totaling at least one hour per inmate each week. In Type III and Type IV facilities there shall be allowed one or more visits, totaling at least one hour, per week. (15 Cal. Code Regs. § 1062.)

For purposes of updating and promulgating regulations, the BSCC utilizes the 2015 Adult Titles 15 and 24 Regulation Revision Executive Steering Committee (ESC). This ESC, which is responsible for regulations relating to visitation, requested that one of its working groups discuss the current visitation regulations as they relate to video visitation. On March 30, 2016, the ESC adopted the working group's recommendation not require in-person visitation and to, instead, provide one free hour of visitation, whether it be in-person or via video. The justification offered for these changes was:

"As currently written, the second sentence of the regulation does not provide sufficient flexibility to facility operators because it seems to require visits on two separate days totaling one hour. Removing 'facilities there shall be allowed no fewer than two visits totaling at least

one hour per inmate each week' in the second sentence clarifies that the required visitation time of one hour may be provided in two half-hour visiting periods or one one-hour period.

"Subsection (d) was added because some facilities use video visitation in lieu of the in-person visits between the inmate and family and friends. If providers of video visitation charge for the mandated one-hour of visitation, it could be a fiscal hardship to the inmate, family and friends." (Programs and Services Worksheets For ESC Review (March 30,2016) http://www.bscc.ca.gov/downloads/Programs%20and%20Services%20Worksheets%20For%20ESC%20Review.pdf.)

The recommendation of the ESC has been sent to the BSCC for a final decision. This Committee has been informed that BSCC is awaiting the result of this bill before deciding whether to adopt the ESC's proposed change.

4) **Argument in Support**: According to the *Los Angeles County Board of Supervisors*, "SB 1157 would require that local correctional facilities that provide for video visitation also provide for in-person visitation.

"The Los Angeles County Public Defender supports the opportunity for in-person visitation for their clients who are in custody, because many inmates could miss out on the positive benefits that in-person visits with loved ones provides. The County's Department of Mental Health (DMH) reports that in-person visits with family members are therapeutic for inmates. DMH also notes that for those inmates who are unable to have in-person visits with their family members or friends, an alternate visitation, such as video conferencing, would provide therapeutic benefits. These benefits are generally in line with the County's goals to reduce recidivism and to improve reentry opportunities."

5) **Argument in Opposition**: According to *San Bernardino County Sheriff's Department*, "San Bernardino County Sheriff's High Desert Detention Center was designed to us video visitation exclusively. The design of the facility prevents in-person visits without major reconstruction as there is no way for visitors to access the secured areas of the facility. This reconstruction, if mandated, would likely be in the tens of millions of dollars to accommodate in-person visits. Moreover, our most recent addition did not account for in-person visits; we use video visiting that does not require the inmate to leave his housing unit. Increase in staff would also be required to control movement of inmates after an in-person visit."

REGISTERED SUPPORT / OPPOSITION:

Support

Community Initiatives for Visiting Immigrants in Confinement (Co-Sponsor)
Community Works – Project WHAT! (Co-Sponsor)
Ella Baker Center for Human Rights (Co-Sponsor)
Essie Justice Group (Co-Sponsor)
Friends Committee on Legislation of California (Co-Sponsor)
Legal Services for Prisoners with Children (Co-Sponsor)
Prison Law Office (Co-Sponsor)
Women's Foundation of California, Women's Policy Institute (Co-Sponsor)

Los Angeles County Board of Supervisors
Abriendo Puertas – Opening Doors
Alameda County Board of Supervisors
American Friends Service Committee
American Civil Liberties Union of California
Architects, Designers, Planners for Social Responsibility
Asian Americans Advancing Justice – California
BPRNA - Bautistas por la Paz
California Attorneys for Criminal Justice
California Catholic Conference
California Immigrant Policy Center
California Public Defenders Association
Californians United for a Responsible Budget
Cares for Youth
Center on Juvenile and Criminal Justice
Central American Resource Center
City and County of San Francisco
Communities United for Restorative Youth Justice
Community Coalition
Drug Policy Alliance
Familia: Trans Queer Liberation Movement
Fathers and Families of San Joaquin
Forward Together
Friends Outside
Grassroots Leadership
Healing Dialogue and Action
Immigrant Legal Resource Center
Immigrant Youth Coalition
Inland Coalition for Immigrant Justice
Justice for Families
Justice Not Jails
Justice Now
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Los Angeles Board of Supervisors
Media Alliance
Nation Inside
National Center for Youth Law
National Compadres Network
National Immigration Law Center
Pacific Juvenile Defender Center
Pangea Legal Services
Prison Policy Initiative
Public Counsel
Returning Home Foundation
Root & Rebound
Rubicon Programs
Sarah Webster Fabio Center for Social Justice
San Francisco Public Defender

San Francisco Children of Incarcerated Parents
San Francisco United School District
SF Youth Commission
Sin Barras
Services, Immigrant Rights, and Education Network
Starting Over, Inc.
W. Haywood Burns Institute
Young Women's Freedom Center

Opposition

California State Sheriffs' Association
Madera County Board of Supervisors
San Bernardino County Sheriff's Department
Urban Counties of California

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Date of Hearing: June 21, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1295 (Nielsen) – As Amended April 26, 2016
As Proposed to be Amended in Committee

SUMMARY: Authorizes the use of documentary evidence for purposes of satisfying the criteria used to evaluate whether a prisoner released on parole is required to be treated by the State Department of State Hospitals as a mentally disordered offender (MDO). Specifically, **this bill**:

1) Specifies that in order to demonstrate that a prisoner is an MDO, the existence or nature of the crime, for which the prisoner has been convicted may be shown with documentary evidence.

2) States that the details underlying the commission of the offense that led to the conviction, including the use of force or violence, causing serious bodily injury, or the threat to use force or violence likely to produce substantial physical harm, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals.

EXISTING LAW:

1) Requires prisoners who meet the following criteria to be deemed an MDO and treated by the State Department of State Hospitals (DSH) as a condition of parole:

   a) The inmate has a severe mental disorder;

   b) The inmate used force or violence in committing the underlying offense;

   c) The severe mental disorder was one of the causes or an aggravating factor in the commission of the offense;

   d) The disorder is not in remission or capable of being kept in remission without treatment;

   e) The inmate was treated for the disorder for at least 90 days in the year before the inmate's release; and,

   f) By reason of the severe mental disorder, the inmate poses a serious threat of physical harm to others. (Pen. Code § 2962.)

2) Allows the Board of Parole Hearings (BPH), upon a showing of good cause, to order the inmate to remain in custody for up to 45 days past the scheduled release date for a full MDO evaluation. (Pen. Code § 2963.)

3) Allows the prisoner to challenge the MDO determination both administratively (a hearing before the board) and judicially (a superior court jury trial). (Pen. Code § 2966.)

4) Requires MDO treatment to be inpatient treatment unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. [Penal Code Section 2964(a).] If the hospital does not place the parolee on outpatient treatment within 60 days of receiving custody of the parolee, he or she may request to hearing to determine whether outpatient treatment is appropriate. (Pen. Code § 2964(b).)

5) Specifies that if the parolee's severe mental disorder is put into remission during the parole period and can be kept that way, the director of the hospital shall notify the BPH and shall discontinue treatment. (Pen. Code § 2968.)

6) Allows the district attorney to file a petition with the superior court seeking a one-year extension of the MDO commitment. (Pen. Code § 2970.)

7) Specifies that the cost of treatment for an MDO, whether inpatient or outpatient, is a state expense while the person is under the jurisdiction of either CDCR or the state hospital. (Pen. Code § 2976.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1295 seeks to relieve crime victims from being required to give traumatic testimony during a parole hearing of their mentally disordered attacker. The bill would amend the Mentally Disordered Offender (MDO) Act to allow admission of probation reports, trial transcripts, and other documentary evidence. Under a 1994 court ruling, proof of an offender's force, violence, or threat could be admitted into a parole hearing through the testimony of an expert evaluator (generally psychologists or psychiatrists) relying on probation reports, DSH evaluations and trial transcripts. This means the evidence could be presented in an MDO parole hearing without prosecutors re-victimizing crime victims.

   "A 2015 California Supreme Court decision overturned the allowance of expert testimony. Since then, expert testimony based on documentary evidence could not be used to prove the force, violence, or threat of an MDO's prior crime during a parole hearing. This poses a problem because it forces the prosecution to choose between victim "re-victimization" and holding a hearing without full evidence. The absence of this testimony could lead to the release of a parolee who with full evidence would be shown to be an MDO. Consequently, prosecutors are put in a tough place during an MDO parole hearing: ask a victim to relive a traumatic experience, or risk releasing a dangerous person who requires in-patient treatment.

   "Fortunately, in its opinion, the California Supreme Court paved the way for a solution. The ruling acknowledged that the Legislature is free to create exceptions to the rules of evidence as it has done in the SVP (Sexually Violent Predator) context. SB 1295 is that solution. This bill will protect victims in two ways – by relieving them of the obligation to provide traumatic testimony in a parole hearing, and by helping to prevent the release of dangerous offenders. This bill will allow all evidence to be considered by allowing documentary

evidence to play a role in the parole hearings of mentally disordered offenders.

2) **Background on the Mentally Disordered Offender Act (Pen. Code § 2960 et seq.):** A MDO commitment is a post-prison civil commitment. The MDO Act is designed to confine as mentally ill an inmate who is about to be released on parole when it is deemed that he or she has a mental illness which contributed to the commission of a violent crime. Rather than release the inmate to the community, CDCR paroles the inmate to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period. The MDO law actually addresses treatment in three contexts - first, as a condition of parole (Pen. Code, § 2962); then, as continued treatment for one year upon termination of parole (Pen. Code § 2970); and, finally, as an additional year of treatment after expiration of the original, or previous, one-year commitment (Pen. Code § 2972). *(People v. Cobb* (2010) 48 Cal.4th 243, 251.)

Penal Code section 2962 lists six criteria that must be proven for an initial MDO certification, namely, whether: (1) the inmate has a severe mental disorder; (2) the inmate used force or violence in committing the underlying offense; (3) the severe mental disorder was one of the causes or an aggravating factor in the commission of the offense; (4) the disorder is not in remission or capable of being kept in remission without treatment; (5) the inmate was treated for the disorder for at least 90 days in the year before the inmate's release; and (6) by reason of the severe mental disorder, the inmate poses a serious threat of physical harm to others. (Pen. Code § 2962, subds. (a)-(d); *People v. Cobb*, *supra*, 48 Cal.4th at p. 251-252.)

The initial determination that the inmate meets the MDO criteria is made administratively. The person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the DSH will evaluate the inmate. If it appears that the inmate qualifies, the chief psychiatrist then will certify to the Board of Parole Hearings (BPH) that the prisoner meets the criteria for an MDO commitment

The inmate may request a hearing before BPH to require proof that he or she is an MDO. If BPH determines that the defendant is an MDO, the inmate may file, in the superior court of the county in which he or she is incarcerated or is being treated, a petition for a jury trial on whether he or she meets MDO criteria. The jury must unanimously agree beyond a reasonable doubt that the inmate is an MDO. If the jury, or the court if a jury trial is waived, reverses the determination of BPH, the court is required to stay the execution of the decision for five working days to allow for an orderly release of the prisoner.

MDO treatment must be on an inpatient basis, unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. But if the parolee can no longer be safely and effectively treated in an outpatient program, he or she may be taken into custody and placed in a secure mental health facility. An MDO commitment is for one year; however, the commitment can be extended. (Pen. Code § 2972, subd. (c).) When the individual is due to be released from parole, the state can petition to extend the MDO commitment for another year. The state can file successive petitions for further extensions, raising the prospect that, despite the completion of a prison sentence, the MDO may never be released. The trial for each one-year commitment is done according to the same standards and rules that apply to the initial trial.

3) **Evidence That the Parolee's Crime of Commitment Involved Force or Violence, or There Was an Express or Implied Threat of Force or Violence:** The determination whether the inmate committed a qualifying violent crime is essentially a formality if he or she was convicted of an offense specified in the governing statute. These include voluntary manslaughter, robbery in which the inmate personally used a weapon, forced or coerced sex crimes and others. (Pen. Code, § 2962, subd. (e)(2)(A)-(O).) Proof of the violent nature of a crime is less clear if it is based on the defendant's conduct in any felony "in which the prisoner used force or violence, or caused serious bodily injury… or made a credible threat to cause "substantial physical harm…." (*Id.*, at subparagraphs (P)-(Q).)

4) **California Supreme Court Decision Barring Hearsay by an Expert to Establish That an Alleged MDO Committed a Qualifying Violent Crime:** As a matter of practice, prosecuting attorneys were using the testimony of mental health expert witnesses to establish the criteria of force/violence or threat of force/violence in the underlying offense during contested MDO proceedings. In 2015, that practice came to a halt when the California Supreme Court held that hearsay from a mental health expert witness is not admissible to prove the underlying facts of the conviction. (*People v. Stevens* (2015) 62 Cal.4th 325.)

   In reaching that holding the Supreme Court stated:

   > We conclude that in a commitment hearing under the MDO Act, the People may not prove the facts underlying the commitment offense (that are necessary to establish the qualifying offense) through a mental health expert's opinion testimony. (*Id.*, at p. 338.)

   Having made that ruling the Supreme Court went on to note, " . . . that the Legislature is free to create exceptions to the rules of evidence as it has done in the SVP context."

   The purpose of this bill is to create the evidentiary exception to which the *Stevens* court referred.

5) **This Bill Creates and Evidentiary Exception to Allow Documentary Evidence to Be Admitted to Establish Use of Force or Violence, Causing Serious Bodily Injury, or the Threat to Use Force of Violence Likely to Produce Substantial Physical Harm**. This bill does not limit the type of documentary evidence that a court may admit to establish that the underlying crime involved the use of force or violence, causing serious bodily injury or the threat to use force or violence to produce substantial physical harm.

   While not limiting the documentary evidence, the language of this bill indicates that the documentary evidence may include, probation and sentencing reports, and evaluations by the Department of State Hospitals. Documents such as probation reports or evaluations by the Department of State Hospitals can include allegations that were not admitted by the defendant during the criminal proceeding and were not reflected in the charge or charges to which the defendant was ultimately convicted. If such documentary evidence is admitted to establish the required criteria, the defendant has no opportunity for cross examination, because there is no witness. Such evidence is the functional equivalent of the hearsay testimony from mental health experts that the Supreme Court disallowed in *Stevens*, *supra.*

   The facts of the *Stevens* case illustrate some potential concerns about the use of documentary evidence to establish the underlying facts of the case. In *Stevens*, the defendant was

sentenced to prison for a felony petty theft case. Before the defendant's release on parole, the Department of Corrections and Rehabilitation certified him as an MDO. As part of the basis for his continued commitment as the MDO was a finding that his crime involved an express or implied threat of force or violence. The defendant challenged his continued commitment in court and had a trial to determine the issue. At the trial, Dr. Perry a clinical psychologist at Atascadero State Hospital testified that he had conducted a forensic exam of the defendant. Dr. Perry testified that he relied on defendant's probation officer's report to describe the circumstances of the petty theft offense. Based on the probation officer's report, Dr. Perry testified that defendant had placed several items from a drugstore into his waistband and pockets, before walking out of the store without paying. Dr. Perry testified based on the probation report that when confronted by loss prevention officers, the defendant purported threatened to assault and kill them. Dr. Perry went on to testify that he also tried to push a shopping cart into one of them.

In the *Stevens* case, the defendant was convicted of petty theft. In that case, there was no judicial fact determination that the defendant had made a threat of violence or committed violence as part of the offense. Petty theft with a prior is not inherently a crime of force or violence.

This bill would allow the probation report to be admitted into evidence to establish the facts that the court had disallowed Dr. Perry to testify. However, the same due process concerns exist whether the document itself is introduced, or a witness recites from the document. In either case, the individual against whom the information is introduced does not have the ability to cross examine to test the legitimacy of the information. In either case, the fact finder is not able to evaluate the credibility of the witness that purportedly observed the conduct.

It is appropriate to consider whether the convenience of allowing the introduction of documentary evidence to establish the nature of an underlying crime outweighs the due process concern of providing an individual a meaningful opportunity to confront the evidence against them.

6) **As Proposed to be Amended in Committee:** The proposed amendments to be adopted in committee delete language which would have created a rebuttable presumption that the individual had been treated from 90 days or more within the last year, based on a certified copy of the chief psychiatrist's certification. Existing law already allows such records to be admitted as evidence to establish that the MDO candidate has received 90 days of treatment within the past year.

7) **Argument in Support:** According to *The California District Attorney's Association,* "As you know, the Mentally Disordered Offender Act, found in Penal Code sections 2960 et seq., provides for the civil commitment of a parolee to a Department of State Hospitals (DSH) facility for treatment of a mental disorder. After certification of MDO status by a Chief Psychiatrist of the CA Department of Corrections and Rehabilitation (CDCR), the parolee receives a hearing before the Board of Parole Hearings (BPH) regarding whether he/she fits the six MDO criteria found in PC 2962. The parolee may challenge the BPH finding by filing a petition in the Superior Court of the county in which he/she is housed or treated, for a hearing on whether he/she fits the six MDO criteria.

"One of the six MDO criteria requires that the People prove beyond a reasonable doubt that the parolee was sentenced for a crime listed in PC 2962(e)(2)(A) through (O); or a crime in which the parolee used force or violence or caused serious bodily injury [PC 2962(e)(2)(P)]; or a crime that involved a threat of force or violence [PC 2962(e)(2)(Q)].

"Prior to the California Supreme Court's ruling in *People v. Stevens* (2015) 62 Cal.4th 325, issued on December 10, 2015, the People relied on the holding in *People v. Miller* (1994) 25 Cal.App.4th 913 that allowed proof of the force/violence/threat criteria through the testimony of an expert (psychologist or psychiatrist) evaluator. As the *Stevens* court describes, 'The (*Miller*) court opined that before *Miller*, prosecutors essentially 'revictimized crime victims by having them testify in defendants' MDO hearings about the acts committed against them.'
"*Stevens* overruled *Miller* and approved *People v. Baker* (2012) 204 Cal.App.4th 1234, ruling that the People may not prove the force/violence/threat criteria through the testimony of an expert relying on hearsay in the form of a probation report, etc. *Stevens* thus forces the prosecution to choose between the "revictimization" avoided by *Miller*, or the release of a parolee who actually fits the MDO criteria and represents a serious threat of danger to others.

"The *Stevens* court did, however, invite a legislative fix in its conclusion where it notes that 'the Legislature is free to create exceptions to the rules of evidence as it has done in the SVP (Sexually Violent Predator) context.'

"This legislation takes the court up on its offer, and is necessary to avoid the Hobson's choice of victim 'revictimization' or the release of dangerous persons who require in-patient treatment.

"As noted by the *Stevens* court, a similar exception was created in the SVP context back in 1996. They are referring to subdivision (a)(3) of Section 6600 of the Welfare and Institutions Code, which allows prosecutors to prove the existence of prior convictions with documentary evidence, including trial transcripts, probation reports, and evaluations by DSH. This bill would simply provide similar language for MDOs."

8) **Prior Legislation**:

a) SB 279 (Dunn) Chapter 16, Statutes of 1999, added to the list of crimes a crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used.

b) SB 34 (Peace) Chapter 761, Statutes of 1995, required that the defendant have received a determinate sentence for the crime to be determined an MDO. Expanded the crimes to which this provision applies to include, among others, lewd and lascivious acts on a child under the age of 14 years and arson.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
Crime Victims United of California

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Amended Mock-up for 2015-2016 SB-1295 (Nielsen (S))

Mock-up based on Version Number 97 - Amended Senate 4/26/16
Submitted by: David Billingsley, Assembly Public Safety Committee

**********AMENDMENTS ARE IN ***BOLD**********

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2962 of the Penal Code is amended to read:

2962. As a condition of parole, a prisoner who meets the following criteria shall be provided necessary treatment by the State Department of State Hospitals as follows:

(a) (1) The prisoner has a severe mental disorder that is not in remission or that cannot be kept in remission without treatment.

(2) The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental disorder," as used in this section, does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

(3) The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Parole Hearings or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of, or was an aggravating factor in, the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) (1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals have evaluated the prisoner at a facility of the Department of Corrections and Rehabilitation, and a chief psychiatrist of the Department of Corrections and Rehabilitation has certified to the Board of Parole Hearings that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of State Hospitals pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections and Rehabilitation, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections and Rehabilitation.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is not in remission or cannot be kept in remission without treatment, or (C) that the severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Parole Hearings pursuant to this paragraph, then the Board of Parole Hearings shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) If at least one of the independent professionals who evaluate the prisoner pursuant to paragraph (2) concurs with the chief psychiatrist's certification of the issues described in paragraph (2), this subdivision shall be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

~~(4) The introduction into evidence of a certified copy of the chief psychiatrist's certification prepared pursuant to paragraph (2) shall create a rebuttable presumption that the 90 days or more of treatment required by subdivision (c) has been provided.~~

(e) The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

(D) Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of the carjacking.

(F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(G) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(H) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(I) Lewd acts on a child under 14 years of age in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 where the act was accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(L) Arson in violation of subdivision (a) of Section 451, or arson in violation of any other provision of Section 451 or in violation of Section 455 where the act posed a substantial danger of physical harm to others.

(M) Any felony in which the defendant used a firearm which use was charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

(N) A violation of Section 18745.

(O) Attempted murder.

(P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243.

(Q) A crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used. For purposes of this

subparagraph, substantial physical harm shall not require proof that the threatened act was likely to cause great or serious bodily injury.

(f) For purposes of meeting the criteria set forth in this section, the existence or nature of the crime, as defined in paragraph (2) of subdivision (e), for which the prisoner has been convicted may be shown with documentary evidence. The details underlying the commission of the offense that led to the conviction, including the use of force or violence, causing serious bodily injury, or the threat to use force or violence likely to produce substantial physical harm, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals.

(g) As used in this chapter, "substantial danger of physical harm" does not require proof of a recent overt act.

Date of Hearing: June 21, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1323 (Bates) – As Introduced February 19, 2016

SUMMARY: Includes the synthetic opioid fentanyl in an enhancement statute under which a defendant convicted of any of a list of specified drug commerce crimes involving heroin, cocaine or cocaine base receives an additional prison term of three to 25 years based on the weight of the substance containing the drug involved in the case.

EXISTING LAW:

1) Provides the following penalties for commerce in cocaine, cocaine base, heroin and specified opiates including fentanyl. Sale includes any transfer or distribution:

   a) Possession for sale is punishable by two, three, or four years. (Health and Saf. Code § 11351.)

   b) Sale of fentanyl is punishable by three, four, or five years. If transportation over county lines is involved the offense is punishable by 3, 6, or 9 years. (Health and Saf. Code § 11352.)

2) Provides the following additional sentencing enhancements based on the weight of the heroin, opiate or cocaine possessed for sale or sold. (Health and Saf. Code §§ 11370.4, subd. (a).)

   a) 1 kilogram = 3 years

   b) 4 kilograms = 5 years

   c) 10 kilograms = 10 years

   d) 20 kilograms = 15 years

   e) 40 kilograms = 20 years

   f) 80 kilograms = 25 years

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1323 recognizes that the danger posed by fentanyl is greater than that of other drugs with penalty enhancements based on weight. Fentanyl is not only fifty-times stronger than heroin, but also threatens the lives and safety of those who do not even use it. This bill would therefore take the commonsense step of adding the same enhancements for fentanyl, thereby protecting unknowing users, first responders, and children.

   "Just this year, we have witnessed the severe impact fentanyl is having on our communities. In March, the Sacramento area saw 52 fentanyl overdoses and 14 deaths in the period of just a week. Data from Orange and Los Angeles counties reveals a more than 40% increase, year-over-year, in fentanyl-related deaths. In early June, we learned that beloved musical icon Prince was the latest of thousands of Americans whose lives have been taken by fentanyl. Without swift action, law enforcement officials expect these trends to continue.

   "As demonstrated during the last fentanyl outbreak, a decade ago, the best way to address this serious problem is to suffocate the illegal fentanyl trade at its source. This bill represents a critical step toward preventing fentanyl from causing even more fatalities and damage to our state. By going after the sophisticated criminal organizations that produce, transport, and distribute fentanyl, we give law enforcement the tools it needs to end this deadly scourge.

   "SB 1323 amends Section 11370.4 of the Health and Safety Code to include fentanyl with heroin and cocaine in the category of drugs that are subject to enhancements by weight. By doing so, this bill targets those distributing, trafficking, and selling mass quantities of Fentanyl. The bill does not affect those who use fentanyl – whether legally or illegally. It only targets the high-level, illegal traffickers who are causing the proliferation of fentanyl, leading to hundreds of deaths throughout the state."

2) **Jail Overcrowding**: According to a recent report by the Public Policy Institute of California titled *Capacity Challenges in California's Jails*, California's county jails are facing increasing adult daily populations (ADP). Many counties are facing capacity constraints on their population. Prior to realignment, 17 counties were operating under court orders limiting the number of inmates in their jails. In all, 13 counties including some of the biggest (Los Angeles, Orange, San Diego, and Sacramento) had average daily populations that were larger than the number of beds their jails were rated for.

3) **Fentanyl and Fentanyl Analogs:** Fentanyl was synthesized in the 1960s and has been used medically since 1968. The Centers for Disease Control and Prevention (CDC) website[1] provides this description of fentanyl:

   > Fentanyl, a synthetic and short-acting opioid analgesic, is 50-100 times more potent than morphine and approved for managing acute or chronic pain associated with advanced cancer. …[M]ost cases of fentanyl-related morbidity and mortality have been linked to illicitly manufactured fentanyl and fentanyl analogs, collectively referred to as non-pharmaceutical fentanyl (NPF). NPF is sold via illicit drug markets for its heroin-like effect and often mixed with heroin and/or cocaine as a combination product—with or without the user's knowledge—to increase its euphoric effects. While NPF-related overdoses can be reversed with

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[1] http://emergency.cdc.gov/han/han00384.asp

> naloxone, a higher dose or multiple number of doses per overdose event may be required …due to the high potency of NPF. (Internal quotation marks and footnotes omitted.)

Mixing fentanyl or a fentanyl analog with heroin is not a consistent phenomenon and may change over time and from place to place. A 2015 study[2] by researchers at the Centers for Disease Control and Prevention investigated acetyl fentanyl overdose deaths in Rhode Island over one year's time - March 2012 through May 2013, and separately analyzed data from March through May of 2013. 64% of the decedents in the full year data had consumed only acetyl fentanyl, not a mixture of that drug and heroin, although numerous persons had used a mixture of the two drugs. In the14 acetyl fentanyl overdoses from March through May of 2013, the drug was not likely mixed with heroin.

4) **DEA Analysis of Current Fentanyl Trends**: The Drug Enforcement Administration (DEA) publishes an annual illicit drug "threat assessment." The assessment reviews trends and issues concerning major drugs of abuse.

The 2015 [3]Threat Assessment stated as to fentanyl:

> Fentanyl will remain a threat while the current clandestine production continues; however, *it is unlikely to assume a significant portion of the opioid market. Fentanyl's short-lasting high, coupled with its high mortality rate, renders it unappealing to many opioid users who prefer the longer-lasting high that heroin offers and who wish to avoid the increased danger from fentanyl.* Fentanyl will continue to remain available in limited quantities; however, it will most commonly be consumed unknowingly, mixed with heroin or other drugs. Fentanyl will remain a significant threat to law enforcement personnel and first responders as minute amounts… can be lethal, and visually, can be mistaken for cocaine or white powder heroin. (Italics added.)

The DEA has reported[4] to the United States Senate that most illicit fentanyl is produced in Mexico "with its analogs and precursors obtained from distributors in China. Fentanyl is smuggled across the [Southwest U.S. border] in kilogram quantities…"

5) **Existing Law Covers Many Fentanyl Commerce Crimes as Fentanyl is Often Mixed with Heroin, a Drug Included in the Current Enhancement:** The existing enhancement based on the weight of the drug involved in specified drug commerce crimes includes any substance containing cocaine, cocaine base or heroin. Illicit drug manufacturers, distributors and sellers often mix fentanyl or an analog with heroin, because it is much more potent than heroin and relatively easy and cheap to manufacture. A defendant convicted of commerce involving a mixture of heroin and fentanyl would be subject to the weight enhancement under current law. This bill would only be necessary where the sole drug manufactured, distributed or sold in the underlying crime was fentanyl. However, prosecutors will likely still need to use the analog statute to implement this bill, as most cases will involve fentanyl analogs, not fentanyl per se.

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[2] http://link.springer.com/article/10.1007%2Fs13181-015-0477-9
[3] http://www.dea.gov/docs/2015%20NDTA%20Report.pdf – p. 43
[4] http://www.dea.gov/pr/speeches-testimony/2015t/111715t.pdf

6) **Most Fentanyl Cases Involve a Fentanyl Analog, typically Acetyl Fentanyl:** As noted above, most cases that are reported as involving fentanyl actually involve one of numerous fentanyl analogs or derivatives. Fentanyl and alfafentanyl are Schedule II drugs in California. As reflected in federal law, but not specifically stated in California law, Schedule I drugs are deemed to have no medical utility and a high potential for abuse. Schedule II drugs have legitimate medical uses, but also a high potential for abuse. Where a defendant's crime involved acetyl fentanyl or another related drug that is not listed in the controlled substance schedules, it appears the prosecutor must prove that the drug is an analog of fentanyl. The analog statute applies to Schedule I and Schedule II drugs. (Health & Saf. Code §§ 11054 and 11055.)

   Health and Safety Code Section 11401 defines an analog as follows:

   a) A substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance classified in Section 11054 or 11055.

   b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance classified in Section 11054 or 11055.

7) **Increasing Sentences for Narcotic Fentanyl:** Criminal justice experts and commentators have noted that, with regard to sentencing, "a key question for policy development regards whether enhanced sanctions or an enhanced possibility of being apprehended provide any additional deterrent benefits.

   > Research to date generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits.[5]

   A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

   > A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished. Most of this research studies the relationship between criminal sanctions and crimes other than drug offenses. A related literature focuses

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[5] Valerie Wright, Ph.D., *Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment* (November 2010), The Sentencing Project (http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf.)

> specifically on enforcement of drug laws and the relationship between those criminal sanctions and the outcomes of drug use and drug prices.[6]

In regard to deterrence, the authors note that in "the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy. . . .

> Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not."[7]

The authors of the 2014 report discussed above conclude that incapacitation of certain dangerous offenders can have "large crime prevention benefits," but that incremental, lengthy prison sentences are ineffective for crime deterrence:

> Whatever the estimated average effect of the incarceration rate on the crime rate, the available studies on imprisonment and crime have limited utility for policy. The incarceration rate is the outcome of policies affecting who goes to prison and for how long and of policies affecting parole revocation. Not all policies can be expected to be equally effective in preventing crime. Thus, it is inaccurate to speak of the crime prevention effect of incarceration in the singular. *Policies that effectively target the incarceration of highly dangerous and frequent offenders can have large crime prevention benefits, whereas other policies will have a small prevention effect or, even worse, increase crime in the long run if they have the effect of increasing postrelease criminality.*
>
> Evidence is limited on the crime prevention effects of most of the policies that contributed to the post-1973 increase in incarceration rates. *Nevertheless, the evidence base demonstrates that lengthy prison sentences are ineffective as a crime control measure. Specifically, the incremental deterrent effect of increases in lengthy prison sentences is modest at best. Also, because recidivism rates decline markedly with age and prisoners necessarily age as they serve their prison sentence, lengthy prison sentences are an inefficient approach to preventing crime by incapacitation unless they are specifically targeted at very high-rate or extremely dangerous offenders.* For these reasons, statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime.[8]

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[6] *The Growth of Incarceration in the United States* (2014), Jeremy Travis, Bruce Western and Steve Redburn, Editors, Committee on Causes and Consequences of High Rates of Incarceration, The National Research Council, p. 131 (citations omitted) (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf,)

[7] *Id.* at 132-133.

[8] *Id.* at 155-156 (emphasis added).

With regard to the drug trade, the authors state:

> For several categories of offenders, an incapacitation strategy of crime prevention can misfire *because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case*. Drug dealing is part of a complex illegal market with low barriers to entry. Net earnings are low, and probabilities of eventual arrest and imprisonment are high . . . Drug policy research has nonetheless shown consistently that arrested dealers are quickly replaced by new recruits . . . . At the corner of Ninth and Concordia in Milwaukee in the mid-1990s, for example, 94 drug arrests were made within a 3-month period. "These arrests, [the police officer] pointed out, were easy to prosecute to conviction. But . . . the drug market continued to thrive at the intersection" . . . .
>
> Despite the risks of drug dealing and the low average profits, many young disadvantaged people with little social capital and limited life chances sell drugs on street corners because it appears to present opportunities not otherwise available. However, [they] ... overestimate the benefits of that activity and underestimate the risks. This perception is compounded by peer influences, social pressures, and deviant role models provided by successful dealers who live affluent lives and... avoid arrest. Similar analyses apply to members of deviant youth groups and gangs: as members ... are arrested and removed from circulation, others take their place. Arrests and imprisonments of easily replaceable offenders create illicit "opportunities" for others.[9]

8) **Argument in Support**: According to the *California Police Chiefs Association*, "SB 1323 would include fentanyl with heroin and cocaine in the category of drugs that are subject to enhancements by weight. By doing so, this bill targets those distributing and selling mass quantities of fentanyl.

   "SB 1323 provides an appropriate public policy solution to addressing the danger posed by this illicit drug. By focusing on those who seek to illegally sell the substance, law enforcement can reduce the drug's prevalence in our communities. For those reasons, Cal Chiefs is in support of this measure."

9) **Argument in Opposition**: According to the *American Civil Liberties Union*, "The American Civil Liberties Union of California regrets to inform you of our opposition to SB 1323, a bill that would create sentence enhancements ranging from 3 to 25 years for, among other things, possessing for sale a substance containing fentanyl. In light of existing penalties, existing jail overcrowding, and the growing consensus that the war on drugs has been a massive failure, we do not believe this bill is necessary and may instead be counterproductive.

   "Under existing law, a person who possesses fentanyl for sale or purchases it for sale can be punished by up to four years in jail. (Health and Safety Code §11351.) Likewise, a person can be punished by up to five years in jail for transporting, selling, or giving away fentanyl. (Health and Safety Code §11352.) Adding excessive new sentence enhancements for these

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[9] *Id.*, at 146 (citations omitted).

crimes will not make our communities safer.[10] Rather, studies have found that certainty of punishment – that someone will be punished for a particular crime – has a greater deterrent effect than the severity of the punishment itself.[11] Current law already provides significant penalties for the underlying behavior at issue in this bill.

"Rather than acting as a deterrent, the new enhancements will only serve to overcrowd our jails. By recent accounts, California jails already face problems with overcrowding, with 38 facilities across 20 counties under court-ordered population caps.[12] Unnecessarily crowding our jails and prisons is not fiscally prudent, nor safe for inmates, jail staff, or the public.

"Moreover, there is growing national consensus that the war on drugs, characterized by draconian sentences like the ones at issue in SB 1323, has been a harmful, expensive failure. Just recently, even a former Richard Nixon advisor, one of the original architects of the war, admitted as much, confessing, 'Did we know we were lying about the drugs? Of course we did.'[13]"

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
California College and University Police Chiefs Association
California Narcotic Officers Association
California Police Chiefs Association
California State Sheriffs' Association
City of Laguna Niguel
Crime Victims United of California
Los Angeles District Attorney's Office
Los Angeles Police Protective League
Orange County Board of Supervisors
Orange County District Attorney
Orange County Sheriff
Riverside Sheriffs Association
San Bernardino County Sheriff
San Diego Sheriff
Todd Spitzer, Orange County Supervisor

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association

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[10] Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (Sentencing Project 2010) *available at* http://www.sentencingproject.org/doc/deterrence%20briefing%20.pdf.
[11] *Id.*
[12] Magnus Lofstrum and Brandon Martin, *Just the Facts: California's County Jails,* (Public Policy Institute of California 2015).
[13] Dan Baum, *Legalize it All: How to Win the War on Drugs,* Harpers Magazine (April 2016).

Legal Services for Prisoners with Children

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: June 21, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1404 (Leno) – As Amended May 31, 2016

SUMMARY: Recognizes the Trauma Recovery Center at San Francisco General Hospital as the State Pilot Trauma Recovery Center, and requires the California Victims Compensation and Government Claims Board to use the model developed by this center when it awards grants to establish additional trauma recovery centers pursuant to new funding made available from Proposition 47. Specifically, **this bill**:

1) Provides that the Trauma Recovery Center at the San Francisco General Hospital, University of California, San Francisco is recognized as the State Pilot Trauma Recovery Center (State Pilot TRC). The California Victim Compensation and Government Claims Board shall use the evidence-based Integrated Trauma Recovery Services (ITRS) model developed by the State Pilot TRC when it selects, establishes, and implements trauma recovery centers pursuant to Section 13963.1. In replicating programs funded by the California Victim Compensation and Government Claims Board, the ITRS can be modified to adapt to different populations, but it shall include the following core elements:

   a) Provide outreach and services to crime victims who typically are unable to access traditional services, including, but not limited to, victims who are homeless, chronically mentally ill, of diverse ethnicity, members of immigrant and refugee groups, disabled, who have severe trauma-related symptoms or complex psychological issues, or juvenile victims, including minors who have had contact with the juvenile dependency or justice system.

   b) Victims of a wide range of crimes, including, but not limited to, victims of sexual assault, domestic violence, physical assault, shooting, stabbing, and vehicular assault, human trafficking, and family members of homicide victims.

   c) A structured evidence-based program of mental health and support services provided to victims of violent crimes or family members of homicide victims that includes crisis intervention, individual and group treatment, medication management, substance abuse treatment, case management, and assertive outreach. This care shall be provided in a manner that increases access to services and removes barriers to care for victims of violent crime. This includes providing services in the client's home, in the community, or other locations outside the agency.

   d) Staff shall include a multidisciplinary team of integrated trauma specialists that includes psychiatrists, psychologists, and social workers. The integrated trauma specialist shall be a licensed clinician, or a supervised clinician engaged in completion of the applicable licensure process. Clinical supervision and other supports are provided to staff on a weekly basis to ensure the highest quality of care and to help staff deal constructively with vicarious trauma.

e) Psychotherapy and case management shall be provided by a single point of contact for the client, that is an individual trauma specialist, with support from an integrated trauma treatment team. In order to ensure the highest quality of care, the treatment team shall collaboratively develop treatment plans in order to achieve positive outcomes for clients.

f) Services shall include assertive case management, including, but not limited to, a trauma specialist accompanying the client to court proceedings, medical appointments, or other community appointments as needed. Case management services shall include, but not be limited to, assisting clients file victim compensation applications, file police reports, help with obtaining safe housing and financial entitlements, linkages with medical care, assistance in return to work, liaison with other community agencies, law enforcement, and other support services as needed.

g) Clients shall not be excluded from services solely on the basis of emotional or behavioral issues resulting from trauma, including, but not limited to, substance abuse problems, low initial motivation, or high levels of anxiety.

h) Trauma recovery services shall incorporate established evidence-based practices, including, but not limited to, motivational interviewing, harm reduction, seeking safety, cognitive behavioral therapy, dialectical behavior, and cognitive processing therapy.

i) The goals of a trauma recovery center shall be to decrease psychosocial distress, minimize long-term disability, improve overall quality of life, reduce the risk of future victimization, and promote post-traumatic growth.

j) In order to ensure that clients are receiving targeted and accountable services, treatment shall be provided up to 16 sessions. For those with ongoing problems and a primary focus on trauma, treatment may be extended after special consideration with the clinical supervisor. Extension beyond 32 sessions shall require approval by a clinical steering and utilization group that considers the client's progress in treatment and remaining need.

2) Finds and declares the following:

a) Victims of violent crime may benefit from access to structured programs of practical and emotional support. Research shows that evidence-based trauma recovery approaches are more effective, at a lesser cost, than customary fee-for-service programs. State-of-the-art fee-for-service funding increasingly emphasizes funding best practices, established through research, that can be varied but have specific core elements that remain constant from grantee to grantee. The public benefits when government agencies and grantees collaborate with institutions with expertise in establishing and conducting evidence-based services.

b) The Trauma Recovery Center at San Francisco General Hospital, University of California, San Francisco (UCSF TRC), is an award-winning, nationally recognized program created in 2001 in partnership with the California Victim Compensation and Government Claims Board. The UCSF TRC is hereby recognized as the State Pilot Trauma Recovery Center (State Pilot TRC). The State Pilot TRC was established by the Legislature as a four-year demonstration project to develop and test a comprehensive model of care as an alternative to fee-for-service care reimbursed by victim restitution

funds. It was designed to increase access for crime victims to these funds.

c) The results of this four-year demonstration project have established that the State Pilot TRC model was both clinically effective and cost effective when compared to customary fee-for-service care. Seventy-seven percent of victims receiving trauma recovery center services engaged in mental health treatment, compared to 34 percent receiving customary care. The State Pilot TRC model increased the rate by which sexual assault victims received mental health services from 6 percent to 71 percent, successfully linked 53 percent to legal services, 40 percent to vocational services, and 31 percent to safer and more permanent housing. Trauma recovery center services cost 34 percent less than customary care.

d) The Legislature further finds and declares that systematic training, technical assistance, and ongoing standardized program evaluations are needed to ensure that all new state-funded trauma recovery centers are evidence based, accountable, and clinically effective and cost effective.

EXISTING LAW:

1) Creates the Victims of Crime Program, administered by the Board , to reimburse victims of crime for the pecuniary losses they suffer as a direct result of criminal acts. Indemnification is made from the Restitution Fund, which is continuously appropriated to the board for these purposes. (Gov. Code, §§ 13950-13968.)

2) Authorizes reimbursement to a victim for "[t]he medical or medical related expenses incurred by the victim." (Gov. Code, § 13957, subd. (a)(1).)

3) Provides that the Board shall enter into an interagency agreement with the UCSF to establish a recovery center for victims of crime at the San Francisco General Hospital for comprehensive and integrated services to victims of crime, subject to conditions set by the board. The University Regents must approve the agreement. The section shall only be implemented to the extent that funding is appropriated for that purpose. (Gov. Code, § 13974.5.)

4) Includes the Safe Neighborhoods and Schools Act of 2014. As relevant to this bill, the act does the following: (Gov. Code, § 7599-7599.2.)

   a) Reclassifies controlled substance felony and alternate felony-misdemeanor crimes as misdemeanors, except for defendants convicted of a sex offense, a specified drug crime involving specified weight of volume of the drug, a crime where the defendant used or was armed with a weapon, a homicide, solicitation of murder and any crime for which the sentence is a life term.

   b) Requires the Director of Finance, beginning in 2016, to calculate the savings from the reduced penalties.

   c) The Controller transfers the amount of savings calculated by the Finance Director and transfers that amount from the General Fund to the "Safe Neighborhoods and Schools

Fund.

d) The Controller then distributes the money in the fund according to the following formula:

   i) 25% to the Department of Education for a grant program to public agencies to improve outcomes for kindergarten through high school students at risk of dropping out of school or are crime victims.

   ii) 10% to the Victims of Crime Program to fund for grants to TRCs.

   iii) 65% to the Board of State and Community Corrections for a grant program to public agencies for mental health and drug abuse treatment and diversion programs, with an emphasis on reducing recidivism.

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1404 creates clear guidelines for the provision of Trauma Recovery Center (TRC) services administered by the Victims Compensation & Government Claims Board (VCGCB) in California. By setting clear guidelines and bolstering training for new trauma recovery centers, this bill will ensure that victims of crime in California receive the comprehensive and timely services they need in order to heal, and to avoid negative economic consequences for themselves and their communities. Survivors of crime who received services through the TRC saw significant increases in health and wellness. Seventy-four percent of those served showed an improvement in mental health, and 51% demonstrated an improvement in physical health. TRC services have also improved community engagement and public safety. People who receive services at the TRC are 56% more likely to return to employment, 44% more likely to cooperate with the district attorney, and 69% more likely to generally cooperate with law enforcement. All of these benefits are provided at a 33% lower cost than traditional providers."

2) **Background:** According to the background provided by the author, Senate Bill 1404 creates clear guidelines for the provision of Trauma Recovery Center (TRC) services administered by the Victims Compensation & Government Claims Board (VCGCB) in California, as well as bolster training and technical assistance to new centers.

   By setting clear guidelines and providing training for new TRCs, this bill will ensure that victims of crime in California receive the comprehensive and timely services they need in order to heal, and to avoid negative economic consequences for themselves and their communities. The physical and psychological trauma experienced by victims of crime requires early treatment and comprehensive care. However, in California today, victims and survivors of crime often face significant hurdles in accessing the immediate and comprehensive support needed to recover adequately, and are often unaware that the state offers assistance for certain health and support services.

In order to address this pressing need, a grant program to replicate the successful TRC pioneered by UC San Francisco was created in 2013. This program, housed at the VCGCB, funds $2 million in grants annually. The TRC treatment model was developed in 2001 to address the multiple barriers victims face recovering from crime, and utilizes a comprehensive, flexible approach designed to meet the unique needs of crime victims suffering from trauma. TRCs utilize a multidisciplinary staff to provide direct mental health services and health treatment while coordinating services with law enforcement and other social service agencies, and all services are housed under one roof, with one coordinating point of contact for the victim.

The TRC model has proven to be extremely successful, and since the grant program began, survivors of crime who received services through the TRC saw significant increases in health and wellness. 74% of those served showed an improvement in mental health, and 51% demonstrated an improvement in physical health. People who receive services at the TRC are 56% more likely to return to employment, 44% more likely to cooperate with the district attorney, and 69% more likely to generally cooperate with law enforcement. All of these benefits are provided at a 33% lower cost than traditional providers.

3) **History of the TRC at San Francisco General Hospital:** The TRC at San Francisco General Hospital was originally established pursuant to legislation passed in 2000. AB 2491 (Jackson, Chapter 1016, Statutes of 2000), among other provisions, required the CVCGC Board to enter into an interagency agreement with the University of California, San Francisco, to establish a victims of crime recovery center at San Francisco General Hospital as a four year pilot project to demonstrate the effectiveness of providing comprehensive and integrated services to victims of crime, as an alternative to fee-for-service care reimbursed by the Victim Restitution funds. The goals of the TRC included improving the process of care for victims of crime by enhancing medical services for acute victims of sexual assault, linking victims to other services to facilitate recovery, and improving access to victim compensation funds. In May 2004, the CVCGC Board published its required report to the Legislature on the effectiveness of the victims of crime recovery center, and concluded that the TRC model provides a wider, more effective, range of services at a lower cost for trauma victims that the traditional fee-for-service mental health treatment programs. According to the report, the data demonstrated that this model of care is effective in engaging victims of crime with needed services, improving cooperation with law enforcement, reducing homelessness, facilitating return to work, reducing alcohol and drug abuse, and improving quality of life among victims of interpersonal violence.

4) **Expansion of TRC Model to Other Areas of State:** SB 7 (Budget and Fiscal Review, Chapter 28, Statutes of 2013) created a $2 million grant program within the CVCGC Board to expand the TRC concept to additional areas of the state. With this funding, in October of 2014 the CVCGC Board awarded grants to two TRCs: $670,000 to the Downtown Women's Center in Los Angeles, and $1.3 million to the California State University at Long Beach. In May of 2015, three grants were awarded: $426,341 to the Children's Nurturing Project in Fairfield, which partners with LIFT3 Support Group to provide a comprehensive system of care focused on domestic violence survivors; $716,932 to Fathers and Families of San Joaquin, located in Stockton, partnering with the San Joaquin Behavioral Health Services to provide comprehensive mental health and recovery services to victims of crime; and, $856,727 to the Special Service for Groups, which partners with the Homeless Outreach

Program Integrated Care System to provide mental health services to underserved crime victims in south Los Angeles.

5) **Proposition 47 and Trauma Recovery Center Funding:** On November 4, 2014, voters approved Proposition 47, titled the Safe Neighborhoods and Schools Act, which was placed on the ballot as a citizen's initiative. Proposition 47 made significant changes to the state's criminal justice system by reducing penalties for certain non-violent, nonserious drug and property crimes, and requiring that the resulting savings be spent on (1) mental health and substance abuse treatment services, (2) truancy and dropout prevention, and (3) victim services. To carry out its purpose, Proposition 47 established the SNS Fund, and required that by August 15 of each fiscal year, the Controller disburse moneys deposited into the SNS Fund as follows: 25% to the Department of Education to improve outcomes for pupils by reducing truancy and supporting students who are risk of dropping out or are victims of crime; ***10% to the CVCGC Board to make grants to TRCs to provide services to victims of crime***; and, 65% to the Board of State and Community Corrections, to administer a grant program to public agencies, as specified.

   According to the California Secretary of State's Web site, 59.6 % of voters approved Proposition 47. (See <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf> [as of Mar. 14, 2015].) The purpose of the measure was "to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 70.) One of the ways the measure created savings was by requiring misdemeanor penalties instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession for personal use, unless the defendant has prior convictions for specified violent crimes. (*Ibid.*)

   Four months into its implementation, Proposition 47 has resulted in fewer inmates in state prisons and county jails. According to the Legislative Analysts' Office (LAO), "As of January 28, 2015, the inmate population in the state's prisons was about 113,500, or 3,600 inmates below the February 2015 cap, and slightly below the final February 2016 cap. The expected impact of Proposition 47 on the prison population will make it easier for the state to remain below the population cap." (LAO, *The 2015-16 Budget: Implementation of Proposition 47* (Feb. 2015), p. 10.) The LAO report also found that Proposition 47 will likely reduce the costs of criminal justice for counties, by freeing up jail beds and reducing the time probation departments need to follow prisoners after they are released. (*Id.* at p. 17.)

6) **Legislative Analyst's Report:** In March of 2015, the Legislative Analyst's Office released a report "Improving State Programs for Crime Victims" (LAO report). According to the LAO report, if appropriated structured, TRCs can provide a wide array of services to victims at a single location and can complement existing victim programs. The LAO recommended that the Legislature structure the TRC grants to ensure the funds are spent in an effective and efficient manner and to require the evaluation of TRC grant recipients and their outcomes. The LAO also recommended that the Legislature adopt statutory changes to allow TRCs to have formally recognized victim advocates, which would allow TRCs to have trained staff that can represent victims in their application for victim compensation funds, which would likely increase the approval rate. The LAO also recommended prioritizing TRC grants to regions that do not have a TRC, noting that there are many victims who do not have access to a TRC because they do not live in Los Angeles or San Francisco.

7) **Argument in Support**: According to *Californians for Safety and Justice*, "We are pleased to sponsor Senate Bill 1404, which would create programmatic guidelines for the Trauma Recovery Center (TRC) Grant Program and create the TRC Center of Excellence, housed at UC San Francisco, to provide systematic training, technical assistance and ongoing standardized program evaluations to ensure program fidelity. This bill would help provide quality trauma recovery services to crime victims across the state.

"Californians for Safety and Justice is a nonprofit organization of Californians from diverse sectors joining together to replace prison and justice system waste with smart justice solutions that increase safety and reduce costs. Our work includes a statewide network of over 5,000 crime victims, Crime Survivors for Safety and Justice, a group that aims to reduce barriers to recovery for crime victims and expand victims' support.

"The Trauma Recovery Center model, pioneered in San Francisco in 2001, provides a comprehensive, flexible approach that integrates three modes of service – assertive outreach, clinical case management, and evidence-based trauma-focused therapies. This model is designed to meet the special needs of crime victims suffering from trauma by utilizing a multidisciplinary staff to provide direct mental health services and health treatment while coordinating services with law enforcement and other social service agencies – all under one roof. Survivors of crime who received services through the TRC saw huge increases in health and wellness – 74% show an improvement in mental health, and 51% demonstrate an improvement in physical health. TRC services also improved community engagement and public safety. People who receive services at the TRC are 56% more likely to return to employment, and people who receive services are 44% more likely to cooperate with the district attorney, and 69% more likely to cooperate with law enforcement.

"In 2013, a grant program was created to replicate this successful TRC model in other parts of California. This program, housed at the Victim Compensation and Government Claims Board (VCGCB), totals $2 million annually. In order to ensure other TRCs have the same outstanding outcomes as the San Francisco TRC, specific programmatic guidelines must be in place. SB 518 does exactly that, and additionally creates a Center of Excellence at the original TRC, to provide training, technical assistance, and ongoing standardized program evaluations to ensure program fidelity."

8) **Prior Legislation**:

a) SB 518 (Leno), Required the Victims Compensation and Government Claims Board (Board) to use a specified evidence-based model when giving a grant to a Trauma Recovery Center (TRC), as specified. SB 518 was held in the Assembly Appropriations Committee.

b) SB 71 (Budget and Fiscal Review), Chapter 28, Statutes of 2013, authorized the Board to administer a program to award, upon appropriation by the Legislature, up to $2,000,000 in grants, annually, to trauma recovery centers, as defined, funded from the Restitution Fund.

c) SB 733 (Leno), of the 2009-2010 legislative session, authorized the Board to evaluate applications and award grants totaling up to $3 million, up to $1.7 million per center, to multi-disciplinary TRCs that provide specified services to and resources for crime victims. SB 733 failed passage on the Senate Floor.

d) AB 1669 (Leno), of the 2007-08 Legislative Session, would have appropriated $1.5 million for the TRC at the San Francisco General Hospital. AB 1669 was vetoed.

e) AB 50 (Leno), Chapter 884, Statutes of 2006, appropriated $1.3 million for the TRC at the San Francisco General Hospital.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (sponsor)
Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California Attorney General's Office
California Catholic Conference
California College and University Police Chiefs Association
California Narcotic Officers Association
Children's Defense Fund
Crime Victims United
Fathers and Families of San Joaquin
Los Angeles County Professional Peace Officers Association
Los Angeles Policy Protective League
Natividad Medical Center
Riverside Sheriffs Association
San Francisco Department of Public Health
Society for Social Work Leadership in Health Care, California Chapter
University of California
University of California at Berkeley School of Social Welfare

Opposition

None

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: June 21, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SJR 20 (Hall) – As Amended March 28, 2016

SUMMARY: Urges the Congress of the United States to promptly lift the prohibition against publicly funded scientific research on the causes of gun violence and its effects on public health, and to appropriate funds to the Centers for Disease Control and Prevention and other relevant agencies under the Department of Health and Human Services to conduct that research. Specifically, **this bill**:

1) States the following:

   a) Every day, gun violence destroys lives, families, and communities;

   b) From 2002 to 2013, inclusive, California lost 38,576 individuals to gun violence, of which 2,258 were children;

   c) In 2013 alone, guns were used to kill 2,900 Californians, including 251 children and teenagers, and hospitalized another 6,035 Californians for nonfatal gunshot wounds, including 1,275 children and teenagers;

   d) There were over 350 recorded mass shootings in the United States in 2015;

   e) Since 1996, Congress has adopted annual policy riders, known as the "Dickey Amendment" and "Rehberg Amendment," that effectively prohibit the federal Centers for Disease Control and Prevention (CDC) and other agencies under the federal Department of Health and Human Services from conducting publicly funded scientific research on the causes of gun violence or its effects on public health;

   f) The author of the original Dickey Amendment, former Representative Jay Dickey (R-AR), has stated repeatedly that he regrets offering the amendment and thinks it should be repealed;

   g) Despite Representative Dickey's comments and President Obama's executive action in 2013 directing the CDC to resume gun violence research, Congress has provided no funding, and the restrictive language remains in place;

   h) Since 1996, the federal government has spent $240 million per year on traffic safety research, which has saved 360,000 lives since 1970;

   i) During the same period there has been almost no publicly funded research on gun violence, which kills the same number of people every year;

j) Recently, 110 Members of the Congress of the United States signed a letter urging the leadership of the House of Representatives to end the longstanding ban on federal funding for gun violence research, and over 2,000 doctors in all 50 states plus the District of Columbia did the same;

k) Although Members of Congress may disagree about how best to respond to the problem of gun violence, we should be able to agree that a response should be informed by sound scientific evidence; and,

l) Whether it is horrific headline-generating massacres or unseen violence that occurs every day — the innocent child gunned down in crossfire, the mother murdered during a domestic dispute, or the young life cut tragically short during the heat of a petty argument — the call to action is now clear.

2) Resolves by the Senate and Assembly of the State of California jointly:

a) That a comprehensive evidence-based federal approach to reducing and preventing gun violence is needed to ensure that our communities are safe from gun violence;

b) That federal research is crucial to saving lives, having driven policy to save lives from motor vehicle accidents, sudden infant death syndrome, lead poisoning, and countless other public health crises;

c) That the Legislature urges the Congress of the United States to promptly lift the prohibition against publicly funded scientific research on the causes of gun violence and its effects on public health, and to appropriate funds to the Centers for Disease Control and Prevention and other relevant agencies under the Department of Health and Human Services to conduct that research; and,

d) That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

EXISTING FEDERAL LAW: Eliminates $2.6 million from the Center for Disease Control Budget, reflecting the amount the CDC had previously spent on gun research in an annual rider bill known as the "Dickey Amendment." [1]

EXISTING STATE LAW:

1) Generally regulates the use, possession and sale of deadly weapons in California. (Pen. Code § 16000, et. seq.)

2) Contains legislative findings and declarations that the proliferation and use of assault and .50 BMG rifles poses a threat to the health, safety, and security of all citizens of California. (Pen. Code § 30505.)

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[1] https://www.gpo.gov/fdsys/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: "Every day, gun violence destroys lives, families and communities. From 2002 to 2013, California lost 38,576 individuals to gun violence. In 2013 alone, guns were used to kill 2,900 Californians, including 251 children and teens. That year, at least 6,035 others were hospitalized or treated in emergency rooms for non-fatal gunshot wounds, including 1,275 children and teens.

   "Since 1996, and in spite of these staggering numbers, the United States Congress has continually adopted annual policy riders known as the 'Dickey Amendment' and 'Rehberg Amendment.' These riders have effectively prohibited the Centers for Disease Control and Prevention (CDC), and other agencies, from conducting publicly funded scientific research on the causes of gun violence or its effects on public health.

   "During the same period, the federal government has spent $240 million a year on traffic safety research which kills the same number of people as gun violence every year. This lack of research has made it more difficult to objectively assess the public health impacts of gun violence and find ways to reduce the number of innocent lives lost every year.

   "A comprehensive evidence-based federal approach to reducing and preventing gun violence is needed to ensure that our communities are safe. Federal research is crucial to saving lives from motor vehicle accidents, sudden infant death syndrome, lead poisoning and countless other public crises. It is time for Congress to publicly fund this important research, and treat gun violence as the public health crisis that it is."

2) **State Budget Funding for Gun Violence Research:** The California Legislature approved funding to create a California Firearm Violence Research Center for $5 million over the course of five years. The money is included in the state budget, which is awaiting Gov. Jerry Brown's signature.

3) **Dickey Amendment:** In 1993, the *New England Journal of Medicine* (NEJM) published an article by Arthur Kellerman and colleagues, "Gun ownership as a risk factor for homicide in the home," which presented the results of research funded by the Centers for Disease Control and Prevention (CDC). The study found that keeping a gun in the home was strongly and independently associated with an increased risk of homicide. The article concluded that rather than confer protection, guns kept in the home are associated with an increase in the risk of homicide by a family member or intimate acquaintance. Kellerman was affiliated at the time with the department of internal medicine at the University of Tennessee. He went on to positions at Emory University, and he currently holds the Paul O'Neill Alcoa Chair in Policy Analysis at the RAND Corporation.

   The 1993 NEJM article received considerable media attention, and the National Rifle Association (NRA) responded by campaigning for the elimination of the center that had funded the study, the CDC's National Center for Injury Prevention. The center itself survived, but Congress included language in the 1996 Omnibus Consolidated Appropriations Bill (PDF, 2.4MB) for Fiscal Year 1997 that "none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Referred to as the Dickey amendment after its author,

former U.S. House Representative Jay Dickey (R-AR), this language did not explicitly ban research on gun violence. However, Congress also took $2.6 million from the CDC's budget — the amount the CDC had invested in firearm injury research the previous year — and earmarked the funds for prevention of traumatic brain injury. Dr. Kellerman stated in a December 2012 article in the *Journal of the American Medical Association*, "Precisely what was or was not permitted under the clause was unclear. But no federal employee was willing to risk his or her career or the agency's funding to find out. Extramural support for firearm injury prevention research quickly dried up."

In 2015, former Congressman Dickey came forward in an interview with the Huffington Post and stated that he regretted his Amendment. "I wish we had started the proper research and kept it going all this time," Dickey, an Arkansas Republican, told the Huffington Post in an interview. "I have regrets."[2]

4) **Effect of this Legislation:** According to the American Psychological Association:

> In 1993, the *New England Journal of Medicine* (NEJM) published an article by Arthur Kellerman and colleagues, "Gun ownership as a risk factor for homicide in the home," which presented the results of research funded by the Centers for Disease Control and Prevention (CDC). The study found that keeping a gun in the home was strongly and independently associated with an increased risk of homicide. The article concluded that rather than confer protection, guns kept in the home are associated with an increase in the risk of homicide by a family member or intimate acquaintance. . .
>
> The 1993 NEJM article received considerable media attention, and the National Rifle Association (NRA) responded by campaigning for the elimination of the center that had funded the study, the CDC's National Center for Injury Prevention. The center itself survived, but Congress included language in the 1996 Omnibus Consolidated Appropriations Bill . . . for Fiscal Year 1997 that "none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Referred to as the Dickey amendment after its author, former U.S. House Representative Jay Dickey (R-AR), this language did not explicitly ban research on gun violence. However, Congress also took $2.6 million from the CDC's budget — the amount the CDC had invested in firearm injury research the previous year — and earmarked the funds for prevention of traumatic brain injury.

(Christine Jamieson, *Gun violence research: History of the federal funding freeze,* American Psychological Association, February 2013, http://www.apa.org/science/about/psa/2013/02/gun-violence.aspx.)

This resolution urges the Congress of the United States to promptly lift the prohibition against publicly funded scientific research on the causes of gun violence and its effects on public health, and to appropriate funds to the Centers for Disease Control and Prevention and other relevant agencies under the Department of Health and Human Services to conduct that research.

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[2] http://www.huffingtonpost.com/entry/jay-dickey-gun-violence-research-amendment_us_561333d7e4b022a4ce5f45bf

5) **Argument in Support**: According to The *California Chapters of the Brady Campaign,* "Basic research is an essential element in formulating and carrying out good public policy. Although the limited research that has been conducted to date is promising, large sample sizes are needed to draw robust conclusions. Such research has been inhibited by the lack of federal funding and lack of access to federal data. Since 1996, Congress has adopted annual policy riders, known as the "Dickey Amendment" and "Rehberg Amendment," that effectively prohibit the federal Centers for Disease Control and Prevention (CDC) and other agencies under the federal Department of Health and Human Services from conducting publicly funded scientific research on the causes of gun violence or its effects on public health.

   "SJR 20 urges Congress to lift the prohibition against publicly funded scientific research on the causes of gun violence and its effects on public health, and to appropriate funds to agencies to conduct that research. The fact that Congress has renewed this prohibition for twenty years is a national embarrassment and should be terminated immediately. The prohibition was initially put in place because the gun lobby feared the outcomes. Research must resume so that we can address the scourge of gun violence that is gripping our nation."

6) **Argument in Opposition**: According to *Safari Club International*, "The subject matter of illegal violent use of firearms has already been studied extensively in past years by many researchers throughout the country.

   "The general consensus appears to be that violence involving the possession and/or use of firearms is mostly committed by criminals and the mentally impaired, some as the result of both the legal and illegal use of mind altering substances. There are societal issues identified as well such as poverty, hatred, and disregard for law and order. It has also been found that there is some failure to adequately enforce existing laws.

   "SCI does not believe that establishing another federal research program funded by taxpayers would accomplish anything new of significance.

   "The problems are well known; it is the solutions that are at issue. Past experience has shown that firearms research often results in more proposals to restrict the possession and use of firearms by hunters and other lawful individuals, but little that results in preventing the illegal possession and/or use of firearms by criminals or the mentally impaired."

7) **Related Legislation:** SB 1006 (Wolk) requests the Regents of the University of California (UC) establish a Firearm Violence Research Center (Center) and administer the Center and a grant program pursuant to, and consistent with, specified principles and goals. SB 1006 is being held because the legislature appropriated $5 million dollars for gun violence research in the budget.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics
American College of Emergency Physicians, California Chapter
Americans for Solutions

Bend the Arc
Brotherhood Crusade
California Black Health Network
California Chapters of the Brady Campaign to Prevent Gun Violence
California Children's Hospital Association
California Communities United Institute
California Police Chiefs Association
California School Boards Association
California State Conference of the NAACP
California State Sheriffs' Association
Charles R. Drew University of Medicine and Science
City of Long Beach
Coalition Against Gun Violence
Community Clinic Association
Courage Campaign
Doctors for America
Eric Garcetti, Mayor of Los Angeles
Health Officers Association of California
International Health & Epidermiology Research Center
Law Center to Prevent Gun Violence
Los Angeles City Attorney
Nevada County Democrats
Peace Over Violence
Physicians for Social Responsibility, San Francisco Bay Area Chapter
Rainbow Services
Violence Prevention Coalition
Youth Alive

2 private individuals

Opposition

California Sportsman's Lobby
Gun Owners of California
Outdoor Sportsmen's Coalition of California
Safari Club International

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

CONCURRENCE IN SENATE AMENDMENTS
AB 1511 (Santiago and Chiu)
As Amended May 17, 2016
Majority vote

ASSEMBLY: April 16, 2015 SENATE: 22-15 May 19, 2016

(vote not relevant)

COMMITTEE VOTE: 12-0 (April 08, 2015) RECOMMENDATION: concur
Insurance

Original Committee Reference: **INS.**

SUMMARY: Specifies that the infrequent loan of a firearm may only be made to family members.

The Senate amendments delete the Assembly version of this bill, and instead:

1) Specify that the infrequent loan of a firearm may only be made to family members.

2) Define "family members" as "spouses and registered domestic partners, or parents, children, siblings, grandparents, grandchildren, whether related by blood, adoption, or a step-relation."

3) Require any handgun being loaned be registered to the person making the loan.

EXISTING LAW:

1) States that where neither party to a firearm transaction holds a dealer's license issued as specified, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through a licensed firearms dealer, as specified. (Pen. Code, § 27545.)

2) Specifies that the requirement that a firearm transaction go through a licensed firearms dealer, does not apply to the loan of a firearm between persons who are personally known to each other, if all of the following requirements are satisfied:

   a) The loan is infrequent, as specified. (Pen. Code, § 27880, subd. (a).)

   b) The loan is for any lawful purpose. (Pen. Code, § 27880, subd. (b).)

   c) The loan does not exceed 30 days in duration. (Pen. Code, § 27880, subd. (c).)

   d) For any firearm, the individual being loaned the firearm shall have a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used. (Pen. Code, § 27880, subd. (d).)

3) An "infrequent" loan for purposes of handguns is defined as "less than six transactions per calendar year." (Pen. Code, § 16730, subd. (a)(1).)

4) An "infrequent" loan for purposes of firearms other than handguns is defined as "occasional and without regularity." (Pen. Code, § 16730, subd. (a)(2).)

AS PASSED BY THE ASSEMBLY, this bill clarified reporting requirements for various reports related to insurance that must be submitted to the Legislature. Specifically, this bill:

1) Replaced the general requirement that reports be submitted to the Legislature with a requirement that the following reports be submitted to the Assembly and Senate Committees on Insurance:

    a) Reports regarding the insolvency of an insurer.

    b) Annual report of the California Life and Health Insurance Guarantee Association.

    c) Annual report summarizing the number, type and disposition of complaints received by the Department of Insurance.

    d) Annual report from the California Assigned Risk Plan.

2) Repealed a requirement for the Workers' Compensation Insurance Rating Board report to the Legislature regarding workers' compensation issues for the taxi industry by May 1, 2003.

FISCAL EFFECT: According to the Senate Appropriations Committee:

1) *State prisons*: Potential minor to moderate increase in state costs (General Fund) to the extent narrowing the firearm loan provisions results in additional commitments to state prison. Commitments to state prison under PC § 27590(b), (c), or (e), in which violations of firearm loan provisions can be charged as a felony, have been infrequent, however, to the extent even two additional commitments to state prison occur statewide in any one year would result in new state costs of $58,000 based on the contract bed rate of $29,000 per inmate.

2) *County jails*: Potentially significant increase in local costs (Local Funds) to the extent narrowing the firearm loan provisions results in additional misdemeanor and felony convictions subject to county jail sentences. The DOJ data indicates less than 100 arrests annually statewide for violations of existing firearm loan provisions of law. Potential costs would largely be dependent on the degree to which the narrowed firearm loan provisions are enforced, which is unknown.

COMMENTS: According to the author, "Several recent shootings around the country have shed light on a dangerous loophole in state laws. In California, anyone can borrow a gun from an acquaintance for up to 30 days without a background check – one of the most important safeguards in law. AB 1511 will close this loophole and keep guns out of the hands of dangerous people."

This bill was substantially amended in the Senate and the Assembly-approved version of this bill was deleted. This bill, as amended in the Senate, is inconsistent with Assembly actions and the provisions of this bill, as amended in the Senate, have not been heard in an Assembly policy committee.

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744 FN:

Date of Hearing: June 21, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1511 (Santiago) – As Amended May 17, 2016

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapters of the Brady Campaign
Everytown for Gun Safety
Law Center to Prevent Gun Violence
Moms Demand Action for Gun Sense

Opposition

Firearms Policy Coalition
California Sportsman's Lobby
California State Sheriffs' Association
Outdoor Sportsmen's Coalition of California
Safari Club International
San Bernardino County Sheriff

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744